



Charitable Sales Promotions

Karen F. Lederer

Troutman Sanders LLP

Bennet J. Moskowitz

Troutman Sanders LLP

June 23, 2009



I. CHARITABLE SALES PROMOTIONS

- A. A charitable sales promotion is a sales campaign in which it is represented that the purchase of the advertiser's goods or services will benefit a charitable organization or purpose. A charitable organization means a tax exempt organization described in Section 501 (c)(3) of the Internal Revenue Code. Similarly, a charitable purpose means a purpose listed in 501 (c)(3), i.e., charitable, religious, educational, scientific or literary purposes, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals.
- B. Charitable sales promotions have become increasingly popular in the last few years and may hold particular appeal to retailers and manufacturers during an economic recession, when retail sales are down and at the same time consumers are aware that charitable donations are also down.
- C. Charitable sales promotions utilize the same vehicles as ordinary sales promotions, i.e., print advertisements, in-store promotions, telemarketing campaigns, internet advertising and on-package advertisements.
- D. In a charitable sales promotion, the claim is that the company will donate to charity a certain dollar amount or percent of the purchase price of certain goods or services purchased during a particular period of time.

II. CHARITABLE SOLICITATIONS

- A. Charitable sales promotions are but one part of the broader sphere of "charitable solicitations." Over 40 states and the District of Columbia regulate charitable solicitations.
- B. While reserving for the charities themselves the most extensive regulation, these states also regulate:
 - 1. "Fundraising counsel": Generally defined as those who, for compensation, manage or advise with respect to a charitable solicitation.



2. "Professional fundraisers/solicitors": Generally defined as those who, for compensation, solicit contributions for a charity.
3. "Commercial co-venturers": Generally defined as a person who, for profit, is primarily engaged in commerce other than in connection with soliciting for charities and who conducts a charitable sales promotion.

(a) Examples of definitions of "commercial co-venturer":

1. New Jersey: " 'Commercial co-venturer' means any person, including, but not limited to, any assignee, subcontractor, independent contractor or successor in interest, 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 or charitable purpose."

(N.J. Stat. § 45:17A-20)

2. New York: "'Commercial co-venturer.' Any person who for profit 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 goods, services, entertainment, or any other thing of value will benefit a charitable organization." (N.Y. Exec. Law § 171-a (6))

3. Connecticut: " 'Commercial coventurer' means a person who for profit is regularly and primarily engaged in trade or commerce in this state other than in connection with the raising of funds for charitable organizations or purposes and who conducts a charitable sales promotion."

(Conn. Gen. Stat. § 21a-190a (8))



4. Massachusetts: " 'Commercial co-venturer', any person who for profit or other commercial consideration, conducts, produces, promotes, underwrites, arranges or sponsors a performance, event, or sale to the public of a good or service which is advertised in conjunction with the name of any charitable organization or as benefiting to any extent any charitable purpose. Any such person who will benefit in good will only shall not be deemed a commercial co-venturer if the collection and distribution of the proceeds of the performance, event or sale are supervised and controlled by the benefiting charitable organization."
(Mass. Ann. Laws ch. 68, § 18)

5. Alabama: "Commercial co-venturer. Any person who for profit or other commercial consideration, conducts, promotes, underwrites, arranges, or sponsors a sale, performance, or event of any kind which is advertised, and which will benefit, to any extent, a charitable or religious organization. However, any such person who will benefit in good will only, is not a commercial co-venturer if the collection and distribution of the proceeds of the sale, performance, or event are supervised and controlled by the benefiting charitable or religious organization."
(Code of Ala. § 13A-9-70)

- C. A company that participates in a charitable sales promotion—and does not receive any payment or financial consideration from the charity—will generally fit within the definition of a commercial co-venturer rather than the definition of "fundraising counsel" or "professional fundraisers/solicitors."
- D. Commercial co-venturers are subject to less regulation than fundraising counsel and professional fundraisers/solicitors. Fundraising counsel and professional fundraisers/solicitors are usually required to register annually and post a bond in states where solicitations will be made, make certain disclosures with solicitations, have a written contract with the charitable organization and file it with the state, maintain financial records and report to the charitable organization and the state. Commercial co-venturers, on the other hand, are regulated in only 24 states¹ and the District of Columbia, and these jurisdictions generally do not require annual registration or bonding.
- E. **Caution:** Some states that do not expressly regulate commercial co-venturers may attempt to treat them as fundraising counsel or professional fundraisers/solicitors. The results of such



efforts will depend on the particular language in the state statute as well as the language employed in the promotion. Avoid language that suggests that the consumer is being asked to make a contribution or a donation directly to the charity.

III. COMMERCIAL CO-VENTURER REGISTRATION

- A. Five states require commercial co-venturers to register and pay registration fees. Some states refer simply to registration, others to licensure. California requires registration in certain instances.
1. Alabama: No person shall act as a commercial co-venturer either before he or she registers with the Attorney General, or after the expiration or cancellation of his or her registration and prior to renewal thereof. Applications for registration and renewal shall be in writing, under oath, in the form prescribed by the Attorney General, and shall be accompanied by an annual fee in the amount of one hundred dollars (\$100).
(Code of Ala. § 13A-9-71)
 2. California: A commercial co-venturer that does not take certain steps— (1) have a written contract with a trustee or charitable corporation signed by two officers of the trustee or charitable corporation, prior to representing to the public that the purchase or use of any goods, services, entertainment, or any other thing of value will benefit the trustee or charitable corporation or will be used for a charitable purpose; (2) within 90 days after commencement of those representations, and at the end of each successive 90-day period during which the representations are made, transfer to that trustee or charitable corporation subject to this article all funds, assets, or property received as a result of the representations; (3) provide in conjunction with each required transfer a written accounting to the trustee or charitable corporation subject to this article of all funds, assets, or property received sufficient to enable the trustee or charitable corporation (A) to determine that representations made to the public on its behalf have been adhered to accurately and completely, and (B) to prepare its periodic report filed with the Attorney General pursuant to Section 12586 — shall register and report to the Attorney General on forms required by the Attorney General. An annual registration or renewal fee of two hundred dollars (\$200) shall be required for registration or renewal of registration of a commercial coventure. ([Cal. Gov.](#) Code § 12599.2)

¹ AL, AR, CA, CO, CT, FL, GA, HI, IL, LA, ME, MA, NH, NJ, NY, NC, OH, OR, PA, SC, UT, VA, WA, WI



3. Illinois: Commercial co-venturers are regulated pursuant to Illinois' Charitable Trust Act, which provides that: any legal entity holding property (of a value in excess of \$ 4,000) for or solicited for any charitable purpose; or any chief operating officer, director, executive director or owner of a corporation soliciting or holding property (of a value in excess of \$ 4,000) for a charitable purpose who has received property for charitable purposes shall file a copy of the trust agreement, articles of incorporation or other written instrument, if any, providing for his title, powers or duties and register with the Illinois Attorney General, within 6 months after any part of the income or principal is received for application to the charitable purpose.
(760 Ill. Comp. Stat. Ann. 55/2;55/3;55/6)
 4. Maine: A person or entity may not act as a commercial co-venturer before that person or entity has received a license.
(Me. Rev. Stat. Arm. tit. 9, § 5008)
 5. Massachusetts: No person shall act as a commercial co-venturer for a charitable organization required to have a certificate of registration unless first having registered. Applications for such registration shall be in writing under oath in the form prescribed by the division and shall contain such information as the division may require. The application for registration by a commercial co-venturer shall be accompanied by an annual fee of fifty dollars. A partnership or corporation which is a commercial co-venturer may register for and pay a single fee on behalf of all its members, officers, agents and employees.
(Mass. Ann. Laws ch. 68, § 24)
- B. **Caution:** In all states that regulate charitable solicitations the charities themselves generally must disclose information regarding the commercial co-venturers with whom they work. Therefore, states and the general public may obtain information regarding a particular commercial co-venturer irrespective of that commercial co-venturer's actions in notifying the state.

IV. CONTRACTS: FILING

- A. Many states that regulate commercial co-ventures require the commercial co-venturer and the charitable organization to enter into a written contract. Four states require the co-venturer to file the contract with the appropriate state agency.²



1. Alabama: All contracts entered into between commercial co-venturers and charitable organizations shall be in writing. A true and correct copy of each contract shall be filed by the commercial co-venturer with the Attorney General within 10 days after it is executed. No services shall be performed under a contract until the expiration of 15 days from the date the contract is filed with the Attorney General. Within 90 days after the termination of the contract, the commercial co-venturer shall file a closing statement with the Attorney General disclosing gross receipts and all expenditures incurred in the performance of the contract.
(Code of Ala. § 13A-9-71)
2. Maine: All contracts entered into between a commercial co-venturer and any charitable organization must be in writing, and a true and correct copy of each contract must be filed by the commercial co-venturer who is a party to the contract before services are performed under the contract. (Me. Rev. Stat. Ann. tit. 9, § 5009)
3. South Carolina: A contract or agreement between any commercial co-venturer and a charitable organization must be in writing and filed, along with a Notice of Solicitation form, with the Secretary of State at least ten days before the commercial co-venturer begins any solicitation activity or any other activity contemplated by the contract or agreement in the State. (S.C. Code Ann. § 33-56-70)
4. Massachusetts requires commercial co-venturers to enter into and file written contracts. (Mass. Ann. Laws ch. 68, § 22)

V. CONTRACTS: SUBSTANTIVE REQUIREMENTS

- A. Many states impose substantive requirements with respect to the contract. Generally, these states require the contract to state the addresses and contact information of the signatories, the charitable purpose involved and details of the financial arrangement between the entities.

Examples:

1. The contract must contain a statement of the charitable purpose for which a solicitation campaign is being conducted and the signatures and legibly printed or typed names of individuals representing the contracting parties.
(Me. Rev. Stat. Ann. tit. 9, § 5009)
2. Massachusetts: Every contract or agreement between a professional solicitor or a commercial co-venturer and a charitable organization must include: (1) a



statement of the charitable purposes to be described in the solicitation; and (2) a statement of the guaranteed minimum percentage of the gross receipts from fund-raising which will be utilized exclusively for the charitable purposes described in the solicitation.

(Mass. Aim. Laws ch. 68, § 22)

3. New Jersey: Every contract must contain a provision clearly and conspicuously stating that the parties are subject to New Jersey's Charitable Registration and Investigation Act and any rules adopted pursuant thereto.
(N.J. Stat. § 45:17A-29)

4. New York: Every contract entered between a charitable organization and a commercial co-venturer must contain, in a conspicuous typeface: (a) a concise, accurate statement of the charitable organization's right to cancel; (b) a concise, accurate statement of the period during which the contract may be cancelled; (c) the address to which the notice of cancellation is to be sent; (d) the address of the attorney general to which a duplicate of the notice of cancellation is to be sent; and (e) a clear statement of the financial arrangement including, if applicable, a statement of the percentage of the total funds collected on behalf of the charitable organization which shall be paid to the professional fund raiser or any other person for purposes other than the exclusive benefit of the charitable organization.
(N.Y. Exec. Law § 174-a)

4. South Carolina: A contract or agreement between any commercial co-venturer and a charitable organization must disclose the following, if applicable: (1) legal name and alias name, address, and registration number, if any, of the professional solicitor, professional fundraising counsel, or commercial co-venturer; (2) legal name, address, and registration number of the charitable organization; (3) name and residence address of each person directing or supervising the contract solicitation services; (4) description of the event or campaign; (5) date the solicitation or campaign commences; (6) date the solicitation or campaign terminates; (7) statement of the guaranteed minimum percentage of gross receipts to be remitted or retained by the charitable organization, excluding the amount which the charitable organization must pay for fundraising costs; (8) statement of the percentage of gross receipts with which the professional solicitor, professional fundraising counsel, or commercial co-venturer is compensated, including the amount the professional solicitor, professional fundraising counsel, or commercial co-venturer must be reimbursed as payment for fundraising



costs; and (9) if applicable, the maximum dollar amount that will benefit the charitable organization. (S.C. Code Ann. § 33-56-70)

5. Connecticut: A contract or agreement between any commercial co-venturer and a charitable organization must include the following: (1) The goods or services to be offered to the public; (2) the geographic area where, and the starting and final date when, such offering is to be made; (3) the manner in which the name of the charitable organization is to be used, including any representation to be made to the public as to the amount or per cent per unit of goods or services purchased or used that is to benefit the charitable organization; (4) a provision for a final accounting on a per unit basis to be given by the commercial co-venturer to the charitable organization and the date when it is to be made; and (5) the date when and the manner in which the benefit is to be conferred on the charitable organization.

(Conn. Gen. Stat. § 21a-190g (a))

5. North Carolina: Prior to a co-venture by a charitable organization or sponsor, the charitable organization or sponsor shall obtain an agreement with the co-venturer which shall include the projected amounts of gross sales, the projected sales for each vending unit, the charitable organization or sponsor's share per unit, and the charitable organization or sponsor's projected total dollar share.

(N.C. Admin. Code, Title 18, § 11.0505)

- B. **Caution:** Allow adequate time before the start of the promotion for contract preparation and, if applicable, filing.



VI. DISCLOSURES IN ADVERTISEMENTS

- A. Most states that regulate commercial co-ventures require such entities to obtain the charity's written consent to use its name and to identify the charity and the dollar amount or percent of the purchase price (on a per unit basis if applicable) that the charity will receive and the start and end dates of the promotion. Some states go further and require that advertisements contain: information that will enable consumers to obtain more financial data about the charity, the charity's registration number, and/or that registration does not imply a state's endorsement.

Examples:

1. Massachusetts: All solicitations by commercial co-venturers shall contain, at the time of solicitation, the following disclosures: (1) the name, address and telephone number of the charitable organization and a description of how the contributions raised by the solicitation will be utilized for charitable purposes, or if there is no charitable organization, the name, address and telephone number of the commercial co-venturer and a description of how the contributions raised by the solicitation will be utilized for charitable purposes; (2) the statement that the solicitation is being conducted by a "paid fundraiser"; (3) the guaranteed minimum percentage of the gross receipts from fund-raising that will be utilized exclusively for the charitable purposes described in the solicitation; and such other disclosures as required by relevant rules and regulations promulgated under section twenty-nine. If the solicitation is in advertising, the disclosure shall also include the geographic distribution and the circulation of the publication in which the advertising will appear. (b) For purposes of this section, the guaranteed minimum percentage required to be disclosed by clause (3) of subsection (a) shall be the percentage stated in the contract or written agreement between the commercial co-venturer and the charitable organization.

(Mass. Ann. Laws ch. 68, § 23)

2. New Jersey: The commercial co-venturer shall disclose in each advertisement for the charitable sales promotion 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.

(N.J. Stat. § 45:17A-29)

3. New York: All advertising, of every kind and nature, that a sale of goods, services, entertainment or any other thing of value will benefit a charitable organization shall set forth the anticipated portion of the sales price, anticipated percentage of the gross proceeds, anticipated dollar amount per purchase, or other consideration or benefit the charitable organization is to receive.

(N.Y. Exec. Law § 174-c)

4. California: Prior to any solicitation or sales solicitation for charitable purposes, the solicitor or seller must show the prospective donor/purchaser a "Solicitation or Sale for Charitable Purposes Card." The card must be signed and dated under penalty of perjury by an individual who is a principal, staff member, or officer of the soliciting organization. The card must give the name and address of the soliciting organization or the person who signed the card and the name and business address of the paid individual who is doing the actual soliciting.

- In lieu of exhibiting a card, the solicitor or seller may distribute during the course of the solicitation any printed material if the material complies with the standards set forth below, and provided that the solicitor or seller informs the prospective donor or purchaser that the information as required below is contained in the printed material.
- Information on the card or printed material shall be presented in at least 10-point type and shall include the following:



- a) The name and address of the combined campaign, each organization, or fund on behalf of which any part of the money will be used for charitable purposes.
- b) If there is no organization or fund, the manner in which the money collected will be utilized for charitable purposes.
- c) The non-tax-exempt status of the organization or fund (if applicable)
- d) The percentage of the total gift or purchase price which may be deducted as a charitable contribution under federal and state law. If no portion is so deductible the card shall state that "This contribution is not tax deductible."
- e) If the organization making the solicitation represents any nongovernmental organization by any name ... which could reasonably be understood to imply that the organization is composed of law enforcement or firefighting personnel, the solicitor must give the total number of members in the organization and the number of members working or living within the county where the solicitation is being made, and if the solicitation is for advertising, the statewide circulation of the publication in which the solicited ad will appear.

(Cal. Bus. & Prof. Code § 17510.3)

- If the initial solicitation or sales solicitation is made by radio, television, letter, telephone, or any other means not involving direct personal contact with the person solicited, including over the Internet, this solicitation shall clearly disclose the information above. This disclosure requirement shall not apply to any radio or television solicitation of 60 seconds or less. If the gift is subsequently made or the sale is subsequently consummated, the solicitation or sale for charitable purposes card shall be mailed to or otherwise delivered to the donor, or to the buyer with the item or items purchased.

(Cal. Bus. & Prof. Code §17510.4)

- B. Many state charity laws define the term "solicit" broadly such that charitable sales promotions constitute solicitations. Consequently, advertisements for charitable sales promotions must disclose the same information that these states require a solicitation to disclose.



Example:

If you are a resident of the following states, you may obtain information by contacting:

FLORIDA: A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION OF ABC CHARITY MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICE BY CALLING 1-555-ABC-1234, TOLL-FREE WITHIN THE STATE. ABC Charity's registration number in Florida is 1-555-ABC1234. Maryland: Copies of documents and information submitted by ABC Charity are available for the cost of copies and postage from the Secretary of State, Statehouse, Annapolis, MD 21401, 1-410-974-5534. Mississippi: The official registration and financial information of ABC Charity may be obtained from the Mississippi Secretary of State's office by calling 1-888236-6167. New Jersey: INFORMATION FILED WITH THE ATTORNEY GENERAL CONCERNING THIS CHARITABLE SOLICITATION AND THE PERCENTAGE OF CONTRIBUTIONS RECEIVED BY THE CHARITY DURING THE LAST REPORTING PERIOD THAT WERE DEDICATED TO THE CHARITABLE PURPOSE MAY BE OBTAINED FROM THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY BY CALILNG (973) 504-6215 AND IS AVAILABLE ON THE INTERNET AT www.njconsumeraffairs.gov/ocp.htm#charity. REGISTRATION WITH THE ATTORNEY GENERAL DOES NOT IMPLY ENDORSEMENT. New York: New York residents may obtain a copy of ABC Charity's annual report by writing to the Office of the Attorney General, Department of Law, Charities Bureau, 120 Broadway, New York, NY 10271. North Carolina: Financial information about ABC Charity and a copy of its license is available from the State Solicitation Licensing Branch at (888) 830-4989. Pennsylvania: The official registration and financial information of ABC Charity may be obtained from the Pennsylvania Department of State by calling toll-free, within Pennsylvania, 1-800-732-0999. Virginia: A financial statement for the most recent fiscal year is available upon request from the State Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209; 1-804-786-1343. Washington: You may obtain additional financial disclosure information by contacting the Secretary of State at 1-800-332-GIVE. West Virginia: West Virginia residents may obtain a summary of the registration and financial documents from the Secretary of State, State Capital, Charleston, WV 25305.

- C. Charitable sales promotions are also of course subject to general advertising laws. Thus, for example, if the charity has not endorsed the goods or services, there should be no explicit or implied claim that it has. In 1996, a group of Attorneys General from 16 states and the District of Columbia Corporation Counsel released a working paper on commercial-nonprofit product advertisements. The paper proposed six consumer law guidance principles:



1. Both the corporate sponsor and the nonprofit organization engaged in advertising a commercial product must satisfy all applicable legal standards, including consumer laws prohibiting false advertising, unfair and/or deceptive trade practices and consumer fraud.
 2. Advertisements for commercial products must not misrepresent that a nonprofit organization has endorsed the advertised product. If such an advertisement uses a nonprofit organization's name or logo, and the nonprofit has not in fact endorsed the advertised product, the advertisement must clearly and conspicuously disclose that the nonprofit organization has not endorsed or recommended the product
 3. Advertisements for commercial products using the name or logo of a nonprofit must avoid making express or implied claims that the advertised product is superior, unless the claim is true and substantiated, and the nonprofit has determined the advertised product to be superior. If the nonprofit has not determined the advertised product to be superior, such an advertisement must clearly and conspicuously disclose that fact.
 4. Advertisements for commercial products using a nonprofit's name and logo shall disclose clearly and conspicuously that the commercial sponsor has paid for the use of the nonprofit's name and logo.
 5. Advertisements arising from a corporate-nonprofit arrangement shall not mislead, deceive or confuse the public about the effect of consumers' purchasing decisions on charitable contributions by the consumer or the commercial sponsor.
 6. Nonprofits should avoid entering into exclusive relationships with commercial sponsors for the marketing of commercial products. In the case where an exclusive arrangement does exist, product advertising using a nonprofit's name or logo shall clearly and conspicuously disclose, if that is the case, that the relationship between the commercial sponsor and the nonprofit is exclusive in nature.
- D. **Maximum and Guaranteed Minimum Contributions:** In some charitable sales promotions, the seller and the charity have agreed that the total contribution that the seller will make is capped at a certain amount. It could be deceptive and misleading to continue to advertise the promotion



after the maximum amount has been reached. On the other hand, in some charitable sales promotions the seller has guaranteed the charity a certain minimum contribution regardless of actual sales. Here too, there is the potential for deceiving and misleading consumers if the guaranteed minimum amount is so generous in relation to reasonably anticipated sales that it is unlikely to be augmented based on actual sales. The Attorney General proposed principles discussed above take note of these situations.

VII. BOOKS AND RECORDS

- A. Many states that regulate commercial co-ventures require such entities to maintain accounting records of the promotion for a certain number of years.

Examples:

1. Connecticut: A commercial co-venturer must keep the final accounting for each charitable sales promotion for three years after the final accounting date and such accounting shall be available to the department upon request. (Conn. Gen. Stat. § 21a-190g)
2. New Jersey: Every charitable organization, unless exempted, and every co-venturer subject to the act shall keep complete and accurate records of its activities in this State as may be required by this act, in such form as will enable them to accurately provide the information required by this act or regulations promulgated under the authority of this act. The records shall be made available upon demand by the Attorney General. The records shall be maintained for a period of at least three years after the end of the period of time to which they relate. (N.J. Stat. § 45:17A-31)
3. New York: A professional fund raiser, commercial co-venturer and fund raising counsel shall maintain accurate and current books and records of all activities conducted pursuant to contracts required under section one hundred seventy-three-a of this article; which, until at least three years shall have elapsed after the end of the effective period of the contract to which they relate, shall be kept in such person's office available for inspection and examination and/or audit by the charitable organization and/or attorney general or any duly authorized representative. Provided, however, that any such books and records obtained by the attorney general shall not be available to the public for inspection. A professional fund raiser, commercial co-venturer and fund raising counsel shall, within seven days of a request of any charitable



organization with which it has contracted, provide copies of such records to the charitable organization. (N.Y. Exec. Law § 173)

4. Alabama: A professional fund raiser or commercial co-venturer shall maintain accurate and current books and records of his or her activities while required to be registered under this section and until at least two years have elapsed at the end of the effective period of the registration to which they relate. He or she shall keep the books and records in his or her office available for inspection and examination by the Attorney General, or the duly authorized representative of the Attorney General.
(Code of Ala. § 13A-9-71(h)(3))
5. Arkansas: A commercial co-venturer shall keep the final accounting for each charitable sales promotion for three (3) years after the accounting date, and the accounting shall be available to the Attorney General upon reasonable request.
(Ark. Code Ann. § 4-28-408)
6. Louisiana: A commercial co-venturer shall keep a final accounting for each charitable sales promotion that it conducts for a period of three years following the completion of the charitable sales promotion.
(La. Rev. Stat. § 51:1901.2)
7. Maine: A professional solicitor, professional fund-raising counsel or commercial co-venturer shall maintain accurate and complete books and records of fund-raising activities and telephone solicitation scripts and shall keep those books and records available for inspection by the Attorney General or the office for a period of 3 years after the conclusion of each specific instance in which that person acts as a professional solicitor, professional fund-raising counsel or commercial co-venturer. (Me. Rev. Stat. Ann. tit. 9, § 5008)

VIII. BONDS

- A. Three states require commercial co-venturers to post bonds.
 1. Alabama: \$10,000 (Code of Ala. § 13A-9-71 (h))
 2. Maine: \$25,000 (Me. Rev. Stat. Ann. tit. 9, § 5008)



3. Massachusetts: \$10,000 (Mass. Ann. Laws ch. 68, § 24)

IX. DUE DILIGENCE

- A. At least five states explicitly require commercial co-venturers to determine whether the charities with whom they enter into co-ventures are in compliance with the state law.
 1. Hawaii: No person shall aid, abet, or otherwise permit any persons to solicit contributions from persons in the state unless the person soliciting contributions has complied with the requirements of this chapter.
(Haw. Rev. Stat. Ann. § 467B-9 (i))
 2. New Jersey: It is unlawful for any commercial co-venturer to enter into any contract with any person who is required to have registered and failed to do so. (N.J. Stat. § 45:17A-32)
 3. New York: No commercial co-venturer shall enter into any contract or raise any funds for any organization required to be registered unless such charitable organization actually so registered.
(N.Y. Exec. Law § 174)
 4. Tennessee: No commercial co-venturer shall conduct any charitable sales promotion in this state on behalf of a charitable or civic organization unless the charitable or civic organization is duly registered or granted the appropriate exemption.
(Tenn. Code Ann. § 48-101-519)
 5. Virginia: No commercial co-venturer shall conduct any charitable sales promotion in the Commonwealth on behalf of a charitable or civic organization unless the charitable or civic organization is duly registered or granted the appropriate exempt status.
(Va. Code Ann. § 57-61.2)

X. MISCELLANEOUS REQUIREMENTS

- A. Many states that regulate commercial co-venturers impose additional miscellaneous requirements.

Examples:



1. Florida: Prior to the commencement of any charitable or sponsor sales promotion in this state conducted by a commercial co-venturer on behalf of a charitable organization or sponsor, the commercial co-venturer must obtain the written consent of the charitable organization or sponsor whose name will be used during the charitable or sponsor sales promotion.
(Fla. Stat. § 496.414)
2. Massachusetts: No commercial co-venturer or their agents, servants or employees, including agents, servants or employees assigned to work under the direction of a commercial co-venturer, shall receive compensation which in the aggregate amounts to a total in excess of twenty-five per cent of the total moneys, pledges or other property raised or received by reason of any solicitation activities or campaigns, including reimbursement for all expenses incurred in the solicitation.
(Mass. Ann. Laws ch. 68, § 21(a))
3. New York: Within ninety days after the termination of a sales promotion advertised to benefit a charitable organization, a commercial co-venturer shall provide such organization with an accounting stating the number of items sold, the dollar amount of each sale and the amount paid or to be paid to the charitable organization. In the event that any such sales promotion is longer than a one year period, the commercial co-venturer shall provide the charitable organization with an interim report, at least annually.
(N.Y. Exec. Law § 173-a(3))

XI. PENALTIES

- A. Statutory penalties for violations of laws that regulate charitable sales promotions vary from state-to-state. Generally, the states provide their Attorneys General with enforcement authority. Some states impose criminal sanctions for certain violations.

Examples:

1. New Jersey: Any person who engages in any conduct or an act in violation of any provision of New Jersey's Charitable Registration And Investigation Act and who has not previously violated the act shall, in addition to any other relief authorized by this or any other law, be liable



for a civil penalty of not more than \$10,000 for the first violation of the act. For a second violation of the act, or if a person is found liable for more than one violation of the act within a single proceeding, the liability for the second violation shall not exceed a civil penalty in the amount of \$20,000. For a third violation of the act, or if a person is found liable for more than two violations of the act within a single proceeding, the liability for a third or any succeeding violation shall not exceed a civil penalty in the amount of \$20,000 for each additional violation.

(N.J. Stat. § 45:17A-33)

2. New York: The New York Attorney General may bring an action or special proceeding in New York supreme court against a charitable organization and any other persons acting for it or in its behalf to enjoin such organization and/or persons from continuing the solicitation or collection of funds or property or engaging therein or doing any acts in furtherance thereof, and to cancel any registration statement previously filed with the attorney general pursuant to this article and for an order awarding restitution and damages, penalties and costs; and removing any director or other person responsible for the violation of this article; dissolving a corporation and other relief which the court may deem proper, whenever the attorney general shall have reason to believe that the charitable organization or other person is violating or has violated any of the provisions governing the solicitation and collection of funds for charitable purposes.

(N.Y. Exec. Law § 175(5))

3. Massachusetts: Any person who knowingly violates any provision of the state's laws regarding charitable sales promotions, or who willfully and knowingly gives false or incorrect information to the state in filing statements or reports required by those provisions, whether such report or statement is verified or not, may be fined not more than one thousand dollars or by imprisonment for not more than one year, or both.

(Mass. Ann. Laws ch. 68, § 32(d))