

Charitable Solicitation Laws – Commercial Co-Venture

As hundreds of pink products attest, cause marketing is big business in this country. However, nonprofit and for profit firms looking to take advantage of multi-jurisdictional fundraising and charitable sales promotions need to know that 40 states have laws regulating charitable solicitations. They generally define and regulate “commercial co-venturers,” “fundraising counsel,” “professional fund-raisers/paid solicitors,” “solicitations” and “contributions”. The specific terminology varies from state to state, but these are the terms that are most common.

Commercial co-venturer

Generally, a commercial co-venturer is a person regularly and primarily engaged in commerce (other than in connection with raising funds for charities) who conducts a “charitable sales promotion.” Co-venturers are typically for profit companies. Approximately twenty-one jurisdictions regulate commercial co-venturerers.

While definitions vary from state to state, in general, a “charitable sales promotion” is an advertising or sales campaign conducted by a charitable 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.

Some states have broader definitions. For example, Massachusetts includes in its definition of a commercial co-venturer “any person who promotes the sale of any good or service which is advertised in conjunction with the name of any charity.”

In general, the legal requirements imposed by these statutes include:

- The requirements of a written contract between the charitable organization and the commercial co-venturer. Sometimes the state requires that certain provisions be included in the contract (e.g., a description of the goods or services to be offered to the public, the geographic area of the promotion, the beginning and ending dates, the manner in which the charitable organization’s name will be used, provisions for final accounting by the commercial co-venturer, and the date and manner in which the charitable organization will receive its benefit).
- The charitable organization must file a copy of the contract prior to the charitable sales promotion (Note: the charity, not the commercial co-venturer, frequently must file the contract).
- Several states require registration and bonding of the commercial co-venturer. These include Alabama, Maine, and Massachusetts.
- The commercial co-venturer must keep a copy of its final accounting.
- Some states require disclosure statements to be included in the advertising.

Approximately twelve states require advertisements to disclose the expected portion of the sales price, percentage of gross proceeds, or other consideration the charity is to receive as a result of

the sales promotion. It is important to note that many states require this disclosure on a per-unit basis. For example, "\$1.00 per box" or "5% of the purchase price" rather than a disclosure of the overall contribution to charity as a result of the charitable sales promotion.

Failure to comply has real world consequences. In a 1999 promotion, Yoplait did not reveal on the outside of the lid its maximum donation, which was then \$100,000. That prompted an investigation by the Georgia attorney general's office, which found that 9.4 million lids were returned during the three-month promotion, which promised to pay 50 cents a lid.