WEST VIRGINIA CODE CHAPTER 29 ARTICLE 19

WV Legislature

§29-19-1. Short title.

This article shall be known and may be cited as the "Solicitation of Charitable Funds Act."

WV Legislature

§29-19-1a. General purpose.

The purpose of this article is to protect the people of the State of West Virginia by requiring full public disclosure by persons and organizations who solicit funds from the public and the purposes for which such funds are solicited and how they are actually used, and to prevent deceptive and dishonest statements and conduct in the solicitation and reporting of funds for or in the name of charity.

WV Legislature

§29-19-2. Definitions.

As used in this article:

(1) “Audit” means the systematic examination of records and documents and the securing of other evidence by confirmation, physical inspection, or otherwise, that includes a written assurance that financial statements and reports are fairly presented in conformity with generally accepted accounting principles issued by the American Institute of Certified Public Accountants.

(2) “Charitable organization” means a person who is or holds itself out to be a benevolent, educational, philanthropic, humane, patriotic, religious or eleemosynary organization, or any person who solicits or obtains contributions solicited from the public for charitable purposes, or any person who in any manner employs any appeal for contributions which may be reasonably interpreted to suggest that any part of those contributions will be used for charitable purposes. A chapter, branch, area, office or similar affiliate or any person soliciting contributions within the state for a charitable organization which has its principal place of business outside the state is a charitable organization for the purposes of this article.

(3) “Contribution” means the promise or grant of any money or property of any kind or value.

(4) “Financial review” means an examination of financial statements in accordance with generally accepted accounting principles issued by the American Institute of Certified Public Accountants, in which a certified public accountant has a reasonable basis for expressing limited assurance that the reviewed statements are free of material misstatements or false or missing information and are found to be accurate, complete and fairly presented to meet the requirements of the generally accepted accounting principles.

(5) “Solicit” and “solicitation” means the request or appeal, directly or indirectly, for any contribution on the plea or representation that the contribution will be used for a charitable purpose, including, without limitation, the following methods of requesting a contribution:

(A) Any oral or written request;

(B) Any announcement to the press, over the radio or television, or by telephone, electronic mail or messaging, electronic bulletin board, or Internet technology, concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith;

(C) The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication which directly or by implication seeks to obtain public support; or

(D) The sale of, offer or attempt to sell, any advertisement, advertising space, subscription, ticket or any service or tangible item in connection with which any appeal is made for any

WV Legislature

charitable purpose or where the name of any charitable or civic organization is used or referred to in an appeal as an inducement or reason for making the sale, or when or where in connection with the sale, any statement is made that the whole, or any part of, the proceeds from the sale will be donated to any charitable purpose.

"Solicitation", as defined herein, occurs when the request is made, at the place the request is received, whether or not the person making the request actually receives any contribution.

(6) "Federated fund-raising organization" means a federation of independent charitable organizations which have voluntarily joined together, including, but not limited to, a united fund or community chest, for purposes of raising and distributing money for and among themselves and where membership does not confer operating authority and control of the individual agencies upon the federated group organization.

(7) "Parent organization" is that part of a charitable organization which coordinates, supervises or exercises control over policy, fund raising and expenditures, or assists, receives funds from or advises one or more chapters, branches or affiliates in the state.

(8) "Person" means any individual, organization, trust, foundation, group, association, partnership, corporation, society or any combination of them.

(9) "Professional fund-raising counsel" means any person who for a flat fixed fee under a written agreement plans, conducts, manages, carries on, advises or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of any charitable organization but who actually solicits no contributions as a part of the services. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state is not a professional fund-raising counsel.

(10) "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of a charitable organization, whether the solicitation is performed personally or through that person's agents, servants or employees specially employed by, or for a charitable organization, who are engaged in the solicitation of contributions under the direction of that person, or a person who plans, conducts, manages, carries on, advises or acts as a consultant to a charitable organization in connection with the solicitation of contributions but does not qualify as "professional fund-raising counsel" within the meaning of this article. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state is not a professional solicitor.

No attorney, investment counselor or banker, who advises any person to make a contribution to a charitable organization, is considered, as the result of the advice, a professional fund-raising counsel or a professional solicitor.

(11) "Sign" means the action of affixing a person's signature to any document or record, whether by manual, written, or approved electronic means.

WV Legislature

(12) “Signature” means any mark, symbol, facsimile, or electronic mark or symbol, that depicts a person’s name on any document or record, affixed to the document or record by the person with the intent to authenticate, assert, certify, or agree to the matters, validity, information, or attestation set forth in the document or record.

WV Legislature

§29-19-3.

Repealed.

Acts, 1995 Reg. Sess., Ch. 234.

WV Legislature

§29-19-4.

Repealed.

Acts, 1995 Reg. Sess., Ch. 234.

WV Legislature

§29-19-5. Registration of charitable organizations; fee.

(a) Every charitable organization, except as provided in section six of this article, which intends to solicit contributions, donations or grants within this state or to have funds solicited or received on its behalf shall, prior to any solicitation, register with the Secretary of State, in a manner or method authorized and upon forms prescribed by him or her which shall be good for one full year and which shall be refiled in the next and each following year in which the charitable organization is engaged in solicitation activities. If an organization discontinues solicitation at any time after its last registration filing, then it shall file a registration statement reflecting its activities during its last fiscal year in which solicitation in West Virginia took place. The president, chairman, or principal officer of the charitable organization signed by an authorized agent of the charitable organization shall file the statements required under this article. The statements shall be sworn to and shall contain the following information:

(1) The name of the organization and the purpose for which it was organized;

(2) The principal address of the organization and the address of any offices in this state. If the organization does not maintain an office, the name and address of the person having custody of its financial records;

(3) The names and addresses of any chapters, branches or affiliates in this state;

(4) The place where and the date when the organization was legally established and the form of its organization;

(5) The names and addresses of the officers, directors, trustees and the principal salaried executive staff officer;

(6) A copy of a balance sheet and a statement or report of income and expenses for the organization's immediately preceding fiscal year or a financial statement reporting information showing the kind and amount of funds raised during the preceding fiscal year, the costs and expenses incidental to the fundraising and showing how the funds were disbursed or allocated for the same fiscal year: *Provided,* That in addition to the financial documents required by this subdivision:

(A) Charitable organizations raising more than $500,000 per year in contributions, excluding grants from governmental agencies or private foundations, shall submit a report of an audit by an independent certified public accountant; and

(B) Charitable organizations raising more than $200,000 per year, but less than $500,000 per year in contributions, excluding grants from governmental agencies or private foundations, shall submit a statement of financial review by an independent certified public accountant;

(7) A copy of any determination of the organization's tax-exempt status under the provisions

WV Legislature

of 26 U.S.C. §501(c)(3) and a copy of the last filed Internal Revenue Service Form 990 and Schedule A for every charitable organization and any parent organization;

(8) Whether the organization intends to solicit contributions, donations or grants from the public directly or have other solicitation done on its behalf by others;

(9) Whether the organization is authorized by any other governmental authority to solicit contributions, donations or grants and whether it is or has ever been enjoined by any court from soliciting contributions;

(10) The general purpose or purposes for which the contributions to be solicited shall be used;

(11) The name or names under which it intends to solicit contributions;

(12) The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions;

(13) The names of the individuals or officers of the organization responsible for the final distribution of the contributions;

(14) Copies of all contract documentation from professional fund-raising counsels and professional solicitors as provided in subsection (d), section seven of this article; and

(15) The amount of money received in the state and the amount spent in the state for charitable purposes.

(b) Each chapter, branch or affiliate, except an independent member agency of a federated fundraising organization, may separately report the information required by this section or report the information to its parent organization which shall then furnish the information regarding its West Virginia affiliates, chapters and branches in a consolidated form to the Secretary of State. An independent member agency of a federated fundraising organization, as defined in section two of this article, shall comply with the provisions of this article independently. Each organization shall file a separate registration form for each name under which funds will be solicited.

(c) The registration forms and any other documents prescribed by the Secretary of State shall be signed by an authorized agent, officer or by an independent public accountant and by the chief fiscal officer of the charitable organization.

(d) Every charitable organization receiving less than $1 million during any year which submits an independent registration to the Secretary of State shall pay an annual registration fee of $15; every charitable organization collecting more than $1 million during one year which submits an independent registration to the Secretary of State shall pay an annual registration fee of $50; and a parent organization filing on behalf of one or more chapters, branches or affiliates or a single organization filing under different names shall

WV Legislature

pay a single annual registration fee of $50 for itself and the chapters, branches or affiliates included in the registration statement. All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the State General Revenue Fund and one-half shall be deposited in the services fees and collections account established by §59-1-2 of this code for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

(e) For good cause shown, the Secretary of State may extend the due date for the annual filing of a registration statement or report by a charitable organization or a professional fundraiser for a period not to exceed 90 days. During that period, the previously filed registration statement or report of the charitable organization which has been granted the extension remains in effect.

(f) In addition to the registration fee required by this section, a charitable organization or professional fundraiser, or both, which fails to file a registration statement or report by the original or extended due date for filing as required by this section shall, for each month or part of the month thereafter in which the registration statement or report is not filed, pay an additional fee of $25: *Provided*, That the total amount of the additional fees for a registration statement or report required to be filed in any one year may not exceed $500. All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the State General Revenue Fund and one-half shall be deposited in the service fees and collections account established by §59-1-2 of this code for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

WV Legislature

§29-19-6. Certain persons and organizations exempt from registration.

NOTE: West Virginia Code §29-19-6 was amended by two bills passed during the 2020 Regular Session of the Legislature. When two acts of the Legislature amend the same section of the Code without express recognition in the bill of the action of the other bill, the Legislative Manager makes no determination as to the appropriate, legal effect of the two acts. Therefore, both versions of this section are set out below.

House Bill 4747 (passed last on March 7, 2020) amended West Virginia Code §29-19-6 to read as follows:

The following charitable organizations are not required to file an annual registration statement with the Secretary of State:

(1) Educational institutions, the curriculums of which, in whole or in part, are registered or approved by the State Board of Education, either directly or by acceptance of accreditation by an accrediting body recognized by the State Board of Education; and any auxiliary associations, foundations and support groups which are directly responsible to the educational institutions;

(2) Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his or her use;

(3) Hospitals and licensed nursing homes which are nonprofit and charitable;

(4) Organizations which solicit only within the membership of the organization by the members thereof: *Provided,* That the term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation. For the purpose of this section, "member" means a person having membership in a nonprofit corporation, or other organization, in accordance with the provisions of its articles of incorporation, bylaws or other instruments creating its form and organization; and having bona fide rights and privileges in the organization, including the right to vote, to elect officers, directors and issues, to hold office or otherwise as ordinarily conferred on members of the organizations;

(5) Churches, synagogues, associations or conventions of churches, religious orders or religious organizations that are an integral part of a church which qualifies as tax exempt under the provisions of 26 U.S.C. §501(c)(3) and which qualifies as being exempt from filing an annual return under the provisions of 26 U.S.C. §6033;

(6) Any person, firm, corporation or organization that sponsors a single fundraising event for the benefit of a named charitable organization where all or part of the funds collected are donated to the named charitable organization: *Provided,* That the named charitable organization receiving the funds is registered pursuant to this article, reports each of these donations individually and certifies that no funds were withheld by the organization that solicited the funds;

WVLegislature

(7) Any charitable organization that does not employ a professional solicitor or fundraiser and does not intend to solicit and receive and does not actually raise or receive contributions, donations or grants from the public in excess of $50,000 during a calendar year.

Charitable organizations which do not intend to solicit and receive contributions, donations or grants in excess of $50,000, but do receive in excess of that amount from the public, shall file the annual registration statement within 30 days after contributions are in excess of $50,000.

House Bill 4714 (passed first on March 4, 2020) amended West Virginia Code §29-19-6 to read as follows:

The following charitable organizations are not required to file an annual registration statement with the Secretary of State:

(1) Educational institutions, the curriculums of which, in whole or in part, are registered or approved by the State Board of Education, either directly or by acceptance of accreditation by an accrediting body recognized by the State Board of Education; and any auxiliary associations, foundations and support groups which are directly responsible to the educational institutions;

(2) Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his or her use;

(3) Hospitals and licensed nursing homes which are nonprofit and charitable;

(4) Organizations which solicit only within the membership of the organization by the members thereof: *Provided,* That the term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation. For the purpose of this section, "member" means a person having membership in a nonprofit corporation, or other organization, in accordance with the provisions of its articles of incorporation, bylaws or other instruments creating its form and organization; and having bona fide rights and privileges in the organization, including the right to vote, to elect officers, directors and issues, to hold office or otherwise as ordinarily conferred on members of the organizations;

(5) Churches, synagogues, associations or conventions of churches, religious orders or religious organizations that are an integral part of a church which qualifies as tax exempt under the provisions of 26 U.S.C. §501(c)(3) and which qualifies as being exempt from filing an annual return under the provisions of 26 U.S.C. §6033;

(6) Any person, firm, corporation or organization that sponsors a single fund-raising event for the benefit of a named charitable organization where all or part of the funds collected are donated to the named charitable organization: *Provided,* That the named charitable

WV Legislature

organization receiving the funds is registered pursuant to this article, reports each of these donations individually and certifies that no funds were withheld by the organization that solicited the funds; and

(7) (A) Any charitable organization that does not employ a professional solicitor or fundraiser and does not intend to solicit and receive and does not actually raise or receive contributions, donations or grants from the public in excess of $50,000 during a calendar year.

(B) Charitable organizations which do not intend to solicit and receive contributions, donations or grants in excess of $50,000, but do receive in excess of that amount from the public, shall file the annual registration statement within 30 days after contributions are in excess of $50,000.

WV Legislature

§29-19-7. Filing of solicitation contracts.

(a) Every written contract or agreement between professional fund-raising counsel and a charitable organization shall be filed by the professional fund-raising counsel with the Secretary of State within ten days after said parties have entered into such contract or agreement.

(b) Every written contract or agreement between a professional solicitor and a charitable organization shall be filed by the professional solicitor with the Secretary of State within ten days after said parties have entered into such agreement or contract. In the absence of a written contract or agreement between a professional solicitor and a charitable organization, a written statement of the nature of the arrangement to prevail in lieu thereof shall be filed.

(c) Each statement must clearly provide the amount, percentage or other method of compensation to be received by the professional solicitor or professional fund-raising counsel as a result of the contract or arrangement.

(d) Each charitable organization, as part of its registration as required in section five of this article, shall file with the Secretary of State copies of all documents reflecting the final settlement amounts for a solicitation contract or, in the case of multiple year contracts, documents reflecting the total amount of money, funds or other property raised and expenses incurred by the professional fund-raising counsel or professional solicitor in a fiscal year.

(e) For purposes of this section, the total moneys, funds, pledges or other property raised or received shall not include the actual cost to the charitable organization or professional solicitor of goods sold or service provided to the public in connection with the soliciting of contributions.

WV Legislature

§29-19-8. Limitations on activities of charitable organizations.

No charitable organizations subject to this article may solicit funds from the public except for charitable purposes or expend funds raised for charitable purposes not stated in its solicitation materials.

All registered charitable organizations and their professional fund raisers and solicitors are required to disclose in writing: (1) The name of a representative of the charitable organization to whom inquiries can be made; (2) the name of the charitable organization; (3) the purpose of the solicitation; (4) upon request of the person solicited, the estimated percentage of the money collected which will be applied to the cost of solicitation and administration or how much of the money collected will be applied directly for the charitable purpose; and (5) the number of the raffle, bingo or other such state permit used for fund raising.

Every printed solicitation shall include the following statement: "West Virginia residents may obtain a summary of the registration and financial documents from the Secretary of State, State Capitol, Charleston, West Virginia 25305. Registration does not imply endorsement."

The disclosure statement shall be conspicuously displayed on any written or printed solicitation. Where the solicitation consists of more than one piece, the disclosure statement shall be displayed on a prominent part of the solicitation materials.

Organizations applying for registration shall be reviewed according to the following standards:

(a) Charitable organizations shall include in each solicitation a clear description of programs for which funds are requested and source from which written information is available pursuant to section thirteen of this article. Expenditures shall be related in a primary degree to stated purpose (programs and activities) described in solicitations and in accordance with reasonable donor expectations. For purposes of this section, reasonable donor expectation requires that a charitable organization shall not expend funds in ways that are not apparent to a donor from the text of the presentation as being obvious or potential uses for his contribution. The reasonable donor expectation standard shall apply to all expenditures made by the charitable organization when compared to the solicitation materials used.

(b) Charitable organizations shall establish and exercise controls over fund-raising activities conducted for the organizations' benefit, including written contracts and agreements and assurance of fund-raising activities without excessive pressure.

(c) Each charitable organization shall establish an independent governing board which shall oversee the expenditures, policies, programs and purposes of the charity's activities. The independent governing board shall not delegate its oversight control or authority to any other person(s) or organization.

wv.legislature

(d) Members of the independent governing board and officers of the organization shall avoid transactions involving conflict of interest on their part. A charitable organization may enter into transactions involving parties related by blood, marriage or business association only if: (1) Where a majority of the independent governing board has survived disqualification over conflicts of interest to approve the action; and (2) where the related parties or potential conflict is fully disclosed in the application for registration; and (3) where the transaction is fair and reasonable for the organization.

(e) No charitable organization, professional fund raiser or other person soliciting contributions for or on behalf of a charitable organization may use a name, symbol or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public.

WV Legislature

§29-19-9. Registration of professional fundraising counsel and professional solicitor; bonds; records; books.

(a) No person may act as a professional fundraising counsel or professional solicitor for a charitable organization subject to the provisions of this article unless he or she has first registered with the Secretary of State. The registration application shall be submitted in a manner or method authorized by the Secretary of State and contain the information he or she requires. The registration application by professional fundraising counsel or professional solicitor shall be accompanied by an annual fee in the sum of $100. A partnership or corporation, which is a professional fundraising counsel or professional solicitor, may register for and pay a single fee on behalf of all its members, officers, agents and employees. However, the names and addresses of all officers, agents and employees of professional fundraising counsel and all professional solicitors, their officers, agents, servants or employees employed to work under the direction of a professional solicitor shall be listed in the application. All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the state General Revenue Fund and one-half shall be deposited in the service fees and collections account established by §59-1-2 of this code for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

(b) The applicant shall, at the time of the making of an application, file with and have approved by the Secretary of State a bond in which the applicant shall be the principal obligor in the sum of $10,000 and which shall have one or more sureties satisfactory to the Secretary of State whose liability in the aggregate as such sureties will at least equal the said sum and maintain the bond in effect so long as a registration is in effect. The bond shall run to the state for the use of the Secretary of State and any person who may have a cause of action against the obligor of the bonds for any losses resulting from malfeasance, nonfeasance or misfeasance in the conduct of solicitation activities. A partnership or corporation which is a professional fundraising counsel or professional solicitor may file a consolidated bond on behalf of all its members, officers and employees.

(c) Each registration is valid throughout the state for a period of one year and may be renewed for additional one-year periods upon application submitted to the Secretary of State in a manner or method authorized and in the form prescribed by the Secretary of State and the payment of the fee prescribed in this section.

(d) The Secretary of State or his or her designee shall examine each application and if he or she finds it to be in conformity with the requirements of this article and all relevant rules and the registrant has complied with the requirements of this article and all relevant rules, he or she shall approve the registration.

WV Legislature

§29-19-10. Information filed to become public records.

Registration statements and applications, reports, professional fund-raising counsel contracts or professional solicitor contracts, and all other documents and information required to be filed under this article or by the Secretary of State shall become public records in the office of the Secretary of State, and shall be open to the general public for inspection at such time and under such conditions as the Secretary of State may prescribe.

WV Legislature

§29-19-11. Records to be kept by charitable organizations, professional fund-raising counsel and professional solicitors.

Every charitable organization, professional fund raising counsel and professional solicitor subject to the provisions of this article shall, in accordance with the rules prescribed by the Secretary of State, keep true fiscal records as to its activities in this state as may be covered by this article in such form as will enable it accurately to provide the information required by this article. Upon demand, such records shall be made available to the Secretary of State or the Attorney General for inspection. Such records shall be retained for a period of at least three years after the end of the period of registration to which they relate.

WV Legislature

§29-19-12. Reciprocal agreements.

The Secretary of State may enter into reciprocal agreements with the appropriate authority of any other state for the purpose of exchanging information with respect to charitable organizations, professional fund-raising counsel and professional solicitors. Pursuant to such agreements the Secretary of State may accept information filed by a charitable organization, professional fund-raising counsel or professional solicitor with the appropriate authority of another state in lieu of the information required to be filed in accordance with the provisions of this article, if such information is substantially similar to the information required under this article.

WV Legislature

§29-19-13. Prohibited acts.

(a) No charitable organization, professional fund-raising counsel or professional solicitor subject to the provisions of this article may use or exploit the fact of registration so as to lead the public to believe that such registration in any manner constitutes an endorsement or approval by the state.

(b) No person may, in connection with the solicitation of contributions for or the sale of goods or services of a person other than a charitable organization, misrepresent to or mislead anyone by any manner, means, practice or device whatsoever, to believe that the person on whose behalf such solicitation or sale is being conducted is a charitable organization or that the proceeds of such solicitation or sale will be used for charitable purposes, if such is not the fact.

(c) No person may, in connection with the solicitation of contributions for charitable purposes, misrepresent, mislead, or omit information concerning how the proceeds will be used. Proceeds gathered from any given solicitation must be used for the charitable purposes represented in the materials sent or the presentation given by the solicitor. Violations of this section will be considered to be both a violation of the reasonable donor expectation standard of section eight and may be subject to prosecution for fraud pursuant to section fifteen of this article.

(d) No person may in connection with the solicitation of contributions or the sale of goods or services for charitable purposes represent to or lead anyone by any manner, means, practice or device whatsoever, to believe that any other person sponsors or endorses such solicitation of contributions, sale of goods or services for charitable purposes or approves of such charitable purposes of a charitable organization connected therewith when such other person has not given consent to the use of his or her name for these purposes: Provided, That any member of the board of directors or trustees of a charitable organization or any other person who has agreed either to serve or to participate in any voluntary capacity in the campaign shall be deemed thereby to have given his or her consent to the use of his or her name in said campaign.

(e) No person may make any representation that he or she is soliciting contributions for or on behalf of a charitable organization or shall use or display any emblem, device or printed matter belonging to or associated with a charitable organization for the purpose of soliciting or inducing contributions from the public without first being authorized to do so by the charitable organization.

(f) No professional solicitor may solicit in the name of or on behalf of any charitable organization unless such solicitor:

Has obtained the written authorization of two officers of such organization, a copy of which shall be filed with the Secretary of State. Such written authorization shall bear the signature of the solicitor and shall expressly state on its face the period for which it is valid, which

WV Legislature

shall not exceed one year from the date issued.

WV Legislature

§29-19-14. Nonresident charitable organizations, professional fund-raising counsel and solicitors; designation of Secretary of State as agent for service of process; notice of such service by Attorney General.

Any charitable organization or professional fund-raising counsel or professional solicitor having its or his or her principal place of business without the state, or organized under and by virtue of the laws of a foreign state, which or who shall solicit contributions from people in this state, is subject to the provisions of this article and shall be deemed to have irrevocably appointed the Secretary of State as its or his or her agent upon whom may be served any summons, subpoena, subpoena duces tecum or other process directed to such charitable organization, professional fund-raising counsel or professional solicitor or any partner, principal officer or director thereof in any action or proceeding brought under the provisions of this article. Service of such process upon the Secretary of State shall be made by personally delivering to and leaving with him a copy thereof along with the fee required by section two, article one, chapter fifty-nine of this code, and such service shall be sufficient service: Provided, That notice of such service and a copy of such process are forthwith sent by the Secretary of State to such charitable organization or professional fund-raising counsel or professional solicitor by registered or certified mail with return receipt requested at its or his or her office, as set forth in the registration form required to be filed with the Secretary of State pursuant to this article or in default of the filing of such form, at the last address known to the Secretary of State.

WV Legislature

§29-19-15. Enforcement and penalties.

(a) The Secretary of State, upon his or her own motion, or upon complaint of any person, may, if he or she finds reasonable ground to suspect a violation, investigate any charitable organization, professional fund-raising counsel or professional solicitor to determine whether such charitable organization, professional fund-raising counsel or professional solicitor has violated the provisions of this article or has filed any application or other information required under this article which contains false or misleading statements.

(b) In addition to the foregoing, any person who willfully and knowingly violates any provision of this article, or who shall willfully and knowingly give false or incorrect information to the Secretary of State in filing statements or reports required by this article, whether such report or statement is verified or not, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined upon first conviction thereof in an amount not less than $100 nor more than $500, or be imprisoned in the county jail for not more than six months, or be both fined and imprisoned, and for the second and any subsequent offense to pay a fine of not less than $500 nor more than $1,000, or be imprisoned for not more than one year, or be both fined and imprisoned.

(c) Whenever the Secretary of State, Attorney General or any prosecuting attorney has reason to believe that any charitable organization, professional fund-raising counsel or professional solicitor is operating in violation of the provisions of this article, the Secretary of State, Attorney General or prosecuting attorney may bring an action in the name of the state against such charitable organization and its officers, such professional fund-raising counsel or professional solicitor or any other person who has violated this article in the circuit court of the county wherein the cause of action arises to enjoin such charitable organization or professional fund-raising counsel or professional solicitor or other person from continuing such violation, solicitation or collection, or from engaging therein or from doing any acts in furtherance thereof and for such other relief as the court deems appropriate.

(d) In addition to the foregoing, any charitable organization, professional fund-raising counsel or professional solicitor who willfully and knowingly violates any provisions of this article by employing any device, scheme, artifice, false representation or promise with intent to defraud or obtain money or other property shall be guilty of a misdemeanor, and, upon conviction thereof, for a first offense, shall be fined not less than $100 nor more than $500, or be confined in the county jail not more than six months, or be both fined and imprisoned; and for a second and any subsequent offense, shall be fined not less than $500 nor more than $1,000, or confined in the county jail not more than one year, or be both fined and imprisoned.

At any proceeding under this section, the court shall also determine whether it is possible to return to the contributors the contributions which were thereby obtained.

If the court finds that the said contributions are readily returnable to the original

WV Legislature

contributors, it may order the money to be placed in the custody and control of a general receiver, appointed pursuant to the provisions of article six, chapter fifty-one of this code, who shall be responsible for its proper disbursement to such contributors.

If the court finds that: (1) It is impossible to obtain the names of over one half the persons who were solicited and in violation of this article, or (2) if the majority of individual contributions was of an amount less than $5, or (3) if the cost to the state of returning these contributions is equal to or more than the total sum to be refunded, the court shall order the money to be placed in the custody and control of a general receiver appointed pursuant to the provisions of article six, chapter fifty-one of this code. The general receiver shall maintain this money pursuant to the provisions of article eight, chapter thirty-six of this code.

WV Legislature

§29-19-15a. Private actions and class actions.

(a) Any person who suffers injury or damages as a result of acts or practices in violation of the provisions of this article may bring a civil action against the charitable organization, professional fund raiser, or professional solicitor engaged in such acts or practices. The person may recover such damages sustained as a result of such acts and practices, costs incurred, and reasonable attorneys' fees. Punitive damages may be awarded in cases of intentional violations of this article.

(b) The Attorney General, or Secretary of State, in a representative capacity on behalf of any person entitled to bring an action under this article, or any person entitled to bring an action under this article, may institute a class action, pursuant to the applicable rules of civil procedure governing class actions, for the recovery of damages.

WV Legislature

§29-19-15b. Civil penalty for intentional violations.

In any action brought pursuant to the provisions of this article, if the court finds that intentional violations have occurred, the state, upon petition to the court and in addition to any damages awarded any party or parties, may recover attorney fees and a civil penalty not exceeding three times the amount collected in that civil action. Of any funds recovered as provided for in this section and any other funds recovered by the state as the result of an award for damages, penalties or settlements in enforcing this article, one-half shall be deposited in the state General Revenue Fund and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operations of the office of the Secretary of State. Any balance remaining on June 30, 2001, in the existing special revenue account entitled "charitable organization fund" as established by chapter thirty-four, acts of the Legislature, 1992 regular session, shall be transferred to the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

WV Legislature

§29-19-16.

Repealed.

Acts, 1995 Reg. Sess., Ch. 234.

WV Legislature