WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1977

ENROLLED

SENATE BILL NO. 610

(By Mr. Benson)

PASSED April 9, 1977

In Effect July 1, 1977
AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nineteen, relating to the solicitation of charitable funds act; short title; definitions; commission created; compensation of members and expenses of commission; registration of charitable organizations; exemptions from registration; limitations on payments; limitations on activities; registration of fund-raising counsel and solicitor; bonds; records; books; public records; reciprocal agreements; prohibited acts; nonresident charitable organizations, counsel and solicitors; secretary of state as agent; notice of service by attorney general; and enforcement and penalties.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article nineteen, to read as follows:

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.


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


As used in this article:

(1) "Charitable organization" means a person which is or holds itself out to be a benevolent, educational, philanthropic, humane, patriotic, religious or eleemosy-
a. organization or any person which solicits or obtains
b. contributions solicited from the public for charitable
c. purposes after the effective date of this act. A chapter,
d. branch, area, office or similar affiliate or any person
1. soliciting contributions within the state for a charitable
2. organization which has its principal place of business
3. outside the state is a charitable organization for the
4. purposes of this article. This definition shall not be
5. deemed to include religious organizations or any group
6. affiliated with and forming an integral part of said
7. organization no part of the net income of which inures to
8. direct benefit of any individual and which have received
9. a declaration of current tax exempt status from the gov-
10. ernment of the United States nor shall this definition
11. include any single church congregation located in the
12. county or local congregation of any religious affiliation
13. or any municipal-wide or county-wide little league or
14. similar youth athletic organization or any service club.
15. No such affiliated group may be required to obtain such
16. declaration if the parent or principal organization shall
17. have obtained same.
18. (2) “Contributions” means the promise or grant of any
19. money or property of any kind or value.
20. (3) “Federated fund-raising organization” means a
21. federation of independent charitable organizations which
22. have voluntarily joined together, including, but not
23. limited to, a united fund or community chest, for pur-
24. poses of raising and distributing money for and among
25. themselves and where membership does not confer oper-
26. ating authority and control of the individual agencies
27. upon the federated group organization.
28. (4) “Parent organization” is that part of a charitable
29. organization which coordinates, supervises or exercises
30. control over policy, fund raising and expenditures, or
31. assists or advises one or more chapters, branches or
32. affiliates in the state.
33. (5) “Person” means any individual, organization,
34. trust, foundation, group, association, partnership, cor-
35. poration, society or any combination of them.
(6) "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 such services. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state shall not be deemed to be a professional fund-raising counsel.

(7) "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of a charitable organization, whether such solicitation is performed personally or through their agents, servants or employees specially employed by, or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such 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 act. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state shall not be deemed to be a professional solicitor.

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

(8) "Commission" means the commission on charitable organizations herein created.

§29-19-3. Commission on charitable organizations; powers and duties.

(a) The commission on charitable organizations, herein referred to as the "commission," consists of seven members, one of whom shall be the secretary of state or his
designate, who shall be the chairman, one of whom shall be the attorney general or his designate, one of whom shall be the commissioner of welfare or his designate and one of whom shall be the director of the state department of health or his designate and three members to be appointed by the governor who shall serve at his will and pleasure.

(b) The commission shall promulgate rules and regulations and prescribe forms for registration or other purposes consistent with the specific requirements of this article and, after due notice to and consultation with representatives of charitable organizations, professional fund-raising counsel and professional solicitors and an opportunity for all such to be heard to make effective such rules, regulations, forms and procedures and when necessary to hold hearings and make adjudications as provided in this act and make recommendations to the attorney general for enforcement of this article.


No member of the commission shall receive any compensation, whether in the form of salary, per diem allowance or otherwise, for or in connection with his services as a member. Each member, however, is entitled to reimbursement by the commission for all reasonable and necessary expenses actually incurred in connection with the performance of his duties as a member.

The expenses of the members and the general operating expenses of the commission shall be paid from moneys appropriated by the Legislature for those purposes.

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

(a) Every charitable organization which intends to solicit contributions within this state, or has funds solicited on its behalf, shall, prior to any solicitation file a registration statement with the secretary of state upon forms prescribed by the commission, which shall be good for one full year and which shall be refiled in the next and each following year in which such charitable organization is engaged in solicitation activities. It shall be the duty of the president, chairman or principal officer
of such charitable organization to file the statements required under this article. Such 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, the form of its organization, and a reference to any determination of its tax-exempt status under the Internal Revenue Code;
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 income and expense statement audited by an independent public accountant for the organization's immediately preceding fiscal year, or a copy of a financial statement audited by an independent public accountant covering, in a consolidated report, complete information as to all the preceding year's fund-raising activities of the charitable organization, showing kind and amount of funds raised, costs and expenses incidental thereto, and allocation or disbursement of funds raised: Provided, That only organizations raising more than fifty thousand dollars per year in contributions shall be required to have an audit by an independent public accountant;
7. Whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others;
8. Whether the organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions;
49 (9) The general purpose or purposes for which the contributions to be solicited shall be used;
50 (10) The name or names under which it intends to solicit contributions;
51 (11) The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions; and
52 (12) The names of the individuals or officers of the organization responsible for the final distribution of the contributions.
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54 (b) Each chapter, branch or affiliate, except an independent member agency of a federated fund-raising organization, may separately report the information required by this subsection, or report the information to its parent organization which shall then furnish such information as to its West Virginia affiliates, chapters and branches in a consolidated form to the secretary of state. An independent member agency of a federated fund-raising organization, as hereinbefore defined, shall comply with the provisions of this act independently, unless specifically exempted from doing so.
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56 (c) The registration forms and any other documents prescribed by the commission shall be signed by an authorized officer or by an independent public accountant and by the chief fiscal officer of the charitable organization and shall be verified under oath.
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58 (d) Every charitable organization which submits an independent registration to the secretary of state shall pay an annual registration fee of ten dollars; a parent organization filing on behalf of one or more chapters, branches or affiliates and a federated fund-raising organization filing on behalf of its member agencies shall pay a single annual registration fee for itself and such chapters, branches, affiliates or member agencies included in the registration statement.
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60 §29-19-6. Certain persons and organizations exempt from registration.
61 (a) The following charitable organizations shall not be 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;

(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 use;

(3) Charitable organizations which do not intend to solicit and receive and do not actually raise or receive contributions from the public in excess of seven thousand five hundred dollars during a calendar year or do not receive contributions from more than ten persons during a calendar year, if all of their functions, including fund-raising activities, are carried on by persons who are unpaid for their services and if no part of their assets or income inures to the benefit of or is paid to any officer or member. Nevertheless, if the contributions raised from the public, whether all of such is or is not received by any charitable organization during any calendar year, shall be in excess of two thousand dollars, it shall, within thirty days after the date it shall have received total contributions in excess of seven thousand five hundred dollars, register with and report to the department as required by this article;

(4) Hospitals which are nonprofit and charitable;

(5) Organizations which solicit only within the membership of the organization by the members thereof. The term “membership” shall not include those persons who are granted a membership upon making a contribution as the result of solicitation; or

(6) A local post, camp, chapter or similarly designated element or a county unit of such elements of a bona fide veterans' organization which issues charters to such local elements throughout this state, a bona fide organization of volunteer firemen, a bona fide ambulance association or bona fide rescue squad association or a bona fide auxiliary or affiliate of any such organization, provided all its fund-
raising activities are carried on by members of such an
organization or an affiliate thereof, and such members
receive no compensation directly or indirectly therefor.

(b) Any charitable organization claiming to be exempt
from the registration provisions of this act and which is
about to or does solicit charitable contributions shall
submit, annually, to the secretary of state on forms to be
prescribed by the commission the name, address and
purpose of the organization and a statement setting forth
the reason for the claim for exemption. If exempted, the
secretary of state shall issue, annually, a letter of ex-
emption which may be exhibited to the public. No
registration fee shall be required of any exempt orga-
nization.

§29-19-7. Limitations on amount of payments for solicitation
activities.

(a) No charitable organization shall pay or agree to
pay to a professional solicitor or his agents, servants or
employees in the aggregate a total amount in excess
of fifteen percent (including reimbursement for ex-
penses incurred) of the total moneys, pledges or other
property raised or received by reason of any solicitation
activities or campaigns.

(b) 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 con-
tributions.

(c) Every contract or written agreement between
professional fund-raising counsel and a charitable organi-
ization shall be filed with the secretary of state within ten
days after such contract or written agreement is
concluded.

(d) Every contract or a written statement of the nature
of the arrangement to prevail in the absence of a contract
between a professional solicitor and a charitable organi-
ization shall be filed with the secretary of the state within
ten days after such contract or written agreement is
concluded. If the contract or arrangement with a professional solicitor does not provide for compensation on a percentage basis, the commission shall examine the contract to ascertain whether the compensation to be paid in such circumstances is likely to exceed fifteen percent of the total moneys, pledges or other property raised or received as a result of the contract or arrangement; if the reasonable probabilities are that the compensation will exceed fifteen percent of the total moneys, pledges or other property, the secretary of state shall disapprove the contract or arrangement within ten days after its filing. No registered charitable organization or professional solicitor shall carry out or execute a disapproved contract, or receive or perform services, or receive or make payments, pursuant to a disapproved contract. Any party to a disapproved contract shall, upon written request made within thirty days of disapproval, be given a hearing before the commission within thirty days after such request is filed.


No charitable organizations subject to this article may solicit funds from the public except for charitable purposes or expend funds raised for charitable purposes for noncharitable purposes.

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

(a) No person may act as a professional fund-raising counsel or professional solicitor for a charitable organization subject to the provisions of this article, unless he has first registered with the secretary of state. Applications for such registration shall be in writing under oath or affirmation in the form prescribed by the secretary of state and contain such information as the commission may require. The application for registration by professional fund-raising counsel or professional solicitor shall be accompanied by an annual fee in the sum of fifty dollars. A partnership or corporation, which is a professional fund-raising 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 fund-raising counsel and all professional
solicitors, their officers, agents, servants or employees
employed to work under the direction of a professional
solicitor must be listed in the application.

(b) The applicant shall, at the time of making applica-
tion, 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 ten thousand dollars with 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 said 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 said bonds
for any losses resulting from malfeasance, nonfeasance
or misfeasance in the conduct of solicitation activities.
A partnership or corporation which is a professional
fund-raising counsel or professional solicitor may file
a consolidated bond on behalf of all its members, officers
and employees.

(c) Each registration shall be valid throughout the
state for a period of one year and may be renewed for
additional one-year periods upon written application un-
der oath in the form prescribed by the commission and
the payment of the fee prescribed herein.

(d) The secretary of state or his designate shall
examine each application, and if he finds it to be in
conformity with the requirements of this article and all
relevant rules and regulations and the registrant has
complied with the requirements of this article and all
relevant rules and regulations, he shall approve the
registration. Any applicant who is denied approved
registration may, within fifteen days from the date of
notification of such denial, request, in writing, a hearing
before the commission, which hearing shall be held
within fifteen days from the date of the request.

§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 or by the commission 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.

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

Every charitable organization subject to the provisions of this article shall, in accordance with the rules and regulations prescribed by the commission, 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, the commission 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.


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. The secretary of state shall also grant exemption from the requirement for the filing of annual registration statement with the secretary of state to charitable organizations organized under the laws of another state having their principal place of business outside of this state whose funds are derived principally from sources outside the state and
which have been granted exemption from the filing of registration statements by the state under whose laws they are organized if such state has a statute similar in substance to the provisions of this article.


(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. The use of the following statement shall not be deemed a prohibited exploitation: “Registered with the secretary of state as required by law. Registration does not imply endorsement of a public solicitation for contributions.”

(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 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 name for these purposes; 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 consent to the use of his name in said campaign.
(d) No person may make any representation that he 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.

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

1. 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 express the period for which it is valid, which shall not exceed one year from the date issued; and

2. Such authorization with him when making solicitations and exhibits the same on request to persons solicited or police officers or agents of the secretary of state.

§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 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 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, and such service shall
be sufficient service provided that notice of such service
and a copy of such process are forthwith sent by the
attorney general to such charitable organization or pro-
ofessional fund-raising counsel or professional solicitor by
registered or certified mail with return receipt requested
at its or his 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 attorney general or to the
secretary of state.

(a) If any charitable organization, professional fund-
raising counsel or professional solicitor fails to file any
registration application or statement, report or other
information required to be filed by the secretary of state
or the commission under this article, or otherwise violates
the provisions of this act, the department shall notify
the delinquent charitable organization, professional fund-
raising counsel or professional solicitor by mailing a
notice by registered or certified mail, with return receipt
requested, to its or his last-known address. If the re-
quired registration application or statement, annual re-
port or other information is not filed or if the existing
violation is not discontinued within two weeks after the
formal notification or receipt of such notice, the com-
mission may cancel, suspend or refuse to accept the
registration of such delinquent charitable organization,
professional fund-raising counsel or professional solicitor.
(b) The commission, upon its own motion or upon
complaint of any person, may, if it has reasonable ground
to suspect a violation, investigate any charitable orga-
nization, professional fund-raising counsel or professional
solicitor to determine whether such charitable organiza-
tion, 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. If the commission finds that any applica-
tion or other information contains false or misleading
statements, or that a registrant under this article has violated the provisions thereof, it may recommend to the secretary of state that the registration be suspended or canceled and the secretary of state may so order.

(c) The registration of any charitable organization, professional fund-raising counsel or professional solicitor, which or who knowingly makes a false or misleading statement in any registration application or statement, report or other information required to be filed by the secretary of state or this article shall be revoked.

(d) All administrative proceedings under this article, including the promulgation of rules and regulations, shall be conducted in accordance with the provisions of chapter twenty-nine-a of this code and all commission adjudications shall be subject to review and appeal as provided therein.

(e) In addition to the foregoing, any person who willfully and knowingly violates any provisions 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 sentenced for the first offense to pay a fine of not less than one hundred dollars and not more than five hundred dollars or be imprisoned for not more than six months, or both, and for the second and any subsequent offense to pay a fine of not less than five hundred dollars and not more than one thousand dollars or be imprisoned for not more than one year, or both.

(f) Whenever the 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 or has knowingly and willfully made any false statement in any registration application or statement, report or other information required to be filed by this article or whenever a charitable organization, professional fund-raising counsel or professional solicitor has failed to file a registration statement required by
this article, or whenever there is employed or is about
to be employed in any solicitation or collection of con-
tributions for a charitable organization any device,
scheme or artifice to defraud or to obtain money or
property by means of any false pretense, representation
or promise, or whenever the officers or representatives
of any charitable organization, professional fund-raising
counsel or professional solicitor have refused or failed
after notice to produce any records of such organization,
or whenever the funds raised by solicitation activities
are not devoted or will not be devoted to the charitable
purposes of the charitable organization, in addition to
all other actions authorized by law, the 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 pro-
fessional solicitor or any other person who has violated
this article or who has participated or is about to par-
ticipate in any solicitation or collection by employing
any device, scheme, artifice, false representation or
promise, to defraud or obtain money or other property,
to enjoin such charitable organization or professional
fund-raising counsel or professional solicitor or other
person from continuing such violation, solicitation or
collection, or engaging therein or doing any acts in fur-
therance thereof and for such other relief as the court
deems appropriate.

(g) In addition to the foregoing, any charitable orga-
nization, professional fund-raising counsel or professional
solicitor who willfully and knowingly violates any pro-
visions 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, be fined not less than one hundred
dollars and not more than five hundred dollars or con-
fined in the county jail not more than six months, or
both; and for a second and any subsequent offense shall
be fined not less than five hundred dollars and not more
than one thousand dollars or confined in the county jail
not more than one year, or both.

At any proceeding under this section, the court shall
do 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 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 contribu-
tors.

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 were less than five dollars, or
(3) if the cost to the state of returning these contribu-
tions is equal to or more than the total sum to be re-
funded, the court shall order the money to be placed
in the custody and control of a general receiver ap-
pointed pursuant to the provisions of article six, chapter
fifty-one of this code. The general receiver shall main-
tain this money pursuant to the provisions of article
eight, chapter thirty-six of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Clarence L.chtst  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1977.

J. Williams Jr.  
Clerk of the Senate

C.A. Blankenship  
Clerk of the House of Delegates

M. B. Roth  
President of the Senate

Donald L. Kopp  
Speaker House of Delegates

The within is approved this the 24 day of April, 1977.

Governor