

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1977



ENROLLED

SENATE BILL NO. 610

(By Mr. Benson)



PASSED April 9 1977

In Effect July 1, 1977 ~~Passage~~

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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.

§29-19-1. Short title.

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

§29-19-2. Definitions.

- 1 As used in this article:
- 2 (1) "Charitable organization" means a person which
- 3 is or holds itself out to be a benevolent, educational,
- 4 philanthropic, humane, patriotic, religious or eleemosy-

5 nary organization or any person which solicits or obtains
6 contributions solicited from the public for charitable
7 purposes after the effective date of this act. A chapter,
8 branch, area, office or similar affiliate or any person
9 soliciting contributions within the state for a charitable
10 organization which has its principal place of business
11 outside the state is a charitable organization for the
12 purposes of this article. This definition shall not be
13 deemed to include religious organizations or any group
14 affiliated with and forming an integral part of said
15 organization no part of the net income of which inures to
16 direct benefit of any individual and which have received
17 a declaration of current tax exempt status from the gov-
18 ernment of the United States nor shall this definition
19 include any single church congregation located in the
20 county or local congregation of any religious affiliation
21 or any municipal-wide or county-wide little league or
22 similar youth athletic organization or any service club.
23 No such affiliated group may be required to obtain such
24 declaration if the parent or principal organization shall
25 have obtained same.

26 (2) "Contributions" means the promise or grant of any
27 money or property of any kind or value.

28 (3) "Federated fund-raising organization" means a
29 federation of independent charitable organizations which
30 have voluntarily joined together, including, but not
31 limited to, a united fund or community chest, for pur-
32 poses of raising and distributing money for and among
33 themselves and where membership does not confer oper-
34 ating authority and control of the individual agencies
35 upon the federated group organization.

36 (4) "Parent organization" is that part of a charitable
37 organization which coordinates, supervises or exercises
38 control over policy, fund raising and expenditures, or
39 assists or advises one or more chapters, branches or
40 affiliates in the state.

41 (5) "Person" means any individual, organization,
42 trust, foundation, group, association, partnership, cor-
43 poration, society or any combination of them.

44 (6) "Professional fund-raising counsel" means any
45 person who for a flat fixed fee under a written agreement
46 plans, conducts, manages, carries on, advises or acts as
47 a consultant, whether directly or indirectly, in connec-
48 tion with soliciting contributions for, or on behalf of
49 any charitable organization but who actually solicits no
50 contributions as a part of such services. A bona fide
51 salaried officer or employee of a charitable organization
52 maintaining a permanent establishment within the state
53 shall not be deemed to be a professional fund-raising
54 counsel.

55 (7) "Professional solicitor" means any person who,
56 for a financial or other consideration, solicits contribu-
57 tions for, or on behalf of a charitable organization,
58 whether such solicitation is performed personally or
59 through their agents, servants or employees specially
60 employed by, or for a charitable organization, who are
61 engaged in the solicitation of contributions under the di-
62 rection of such person, or a person who plans, conducts,
63 manages, carries on, advises or acts as a consultant to a
64 charitable organization in connection with the sollicita-
65 tion of contributions but does not qualify as "professional
66 fund-raising counsel" within the meaning of this act. A
67 bona fide salaried officer or employee of a charitable
68 organization maintaining a permanent establishment
69 within the state shall not be deemed to be a professional
70 solicitor.

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

76 (8) "Commission" means the commission on chari-
77 table organizations herein created.

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

1 (a) The commission on charitable organizations, herein
2 referred to as the "commission," consists of seven mem-
3 bers, one of whom shall be the secretary of state or his

4 designate, who shall be the chairman, one of whom shall
5 be the attorney general or his designate, one of whom
6 shall be the commissioner of welfare or his designate
7 and one of whom shall be the director of the state depart-
8 ment of health or his designate and three members to be
9 appointed by the governor who shall serve at his will and
10 pleasure.

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

§29-19-4. Compensation of members; expenses of commission.

1 No member of the commission shall receive any com-
2 pensation, whether in the form of salary, per diem allow-
3 ance or otherwise, for or in connection with his services
4 as a member. Each member, however, is entitled to re-
5 imbursement by the commission for all reasonable and
6 necessary expenses actually incurred in connection with
7 the performance of his duties as a member.

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

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

1 (a) Every charitable organization which intends to
2 solicit contributions within this state, or has funds so-
3 licited on its behalf, shall, prior to any solicitation file
4 a registration statement with the secretary of state
5 upon forms prescribed by the commission, which shall
6 be good for one full year and which shall be refiled in
7 the next and each following year in which such charitable
8 organization is engaged in solicitation activities. It shall
9 be the duty of the president, chairman or principal officer

10 of such charitable organization to file the statements re-
11 quired under this article. Such statements shall be sworn
12 to and shall contain the following information:

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

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

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

21 (4) The place where and the date when the organiza-
22 tion was legally established, the form of its organization,
23 and a reference to any determination of its tax-exempt
24 status under the Internal Revenue Code;

25 (5) The names and addresses of the officers, directors,
26 trustees and the principal salaried executive staff of-
27 ficer;

28 (6) A copy of a balance sheet and income and expense
29 statement audited by an independent public account-
30 tant for the organization's immediately preceding fiscal
31 year, or a copy of a financial statement audited by an
32 independent public accountant covering, in a consolidated
33 report, complete information as to all the preceding
34 year's fund-raising activities of the charitable or-
35 ganization, showing kind and amount of funds raised,
36 costs and expenses incidental thereto, and alloca-
37 tion or disbursement of funds raised: *Provided*,
38 That only organizations raising more than fifty thou-
39 sand dollars per year in contributions shall be re-
40 quired to have an audit by an independent public ac-
41 countant;

42 (7) Whether the organization intends to solicit con-
43 tributions from the public directly or have such done
44 on its behalf by others;

45 (8) Whether the organization is authorized by any
46 other governmental authority to solicit contributions
47 and whether it is or has ever been enjoined by any court
48 from soliciting contributions;

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

51 (10) The name or names under which it intends to
52 solicit contributions;

53 (11) The names of the individuals or officers of the
54 organization who will have final responsibility for the
55 custody of the contributions; and

56 (12) The names of the individuals or officers of the
57 organization responsible for the final distribution of the
58 contributions.

59 (b) Each chapter, branch or affiliate, except an in-
60 dependent member agency of a federated fund-raising
61 organization, may separately report the information re-
62 quired by this subsection, or report the information to its
63 parent organization which shall then furnish such infor-
64 mation as to its West Virginia affiliates, chapters and
65 branches in a consolidated form to the secretary of state.
66 An independent member agency of a federated fund-
67 raising organization, as hereinbefore defined, shall comply
68 with the provisions of this act independently, unless
69 specifically exempted from doing so.

70 (c) The registration forms and any other documents
71 prescribed by the commission shall be signed by an au-
72 thorized officer or by an independent public accountant
73 and by the chief fiscal officer of the charitable organiza-
74 tion and shall be verified under oath.

75 (d) Every charitable organization which submits an
76 independent registration to the secretary of state shall
77 pay an annual registration fee of ten dollars; a parent
78 organization filing on behalf of one or more chapters,
79 branches or affiliates and a federated fund-raising orga-
80 nization filing on behalf of its member agencies shall pay
81 a single annual registration fee for itself and such chapters,
82 branches, affiliates or member agencies included in the
83 registration statement.

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

1 (a) The following charitable organizations shall
2 not be required to file an annual registration state-
3 ment with the secretary of state:

4 (1) Educational institutions, the curriculums of which
5 in whole or in part are registered or approved by the state
6 board of education, either directly or by acceptance of
7 accreditation by an accrediting body recognized by the
8 state board of education;

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

14 (3) Charitable organizations which do not intend to
15 solicit and receive and do not actually raise or receive
16 contributions from the public in excess of seven thousand
17 five hundred dollars during a calendar year or do not
18 receive contributions from more than ten persons during
19 a calendar year, if all of their functions, including fund-
20 raising activities, are carried on by persons who are
21 unpaid for their services and if no part of their assets or
22 income inures to the benefit of or is paid to any officer or
23 member. Nevertheless, if the contributions raised from
24 the public, whether all of such is or is not received by any
25 charitable organization during any calendar year, shall be
26 in excess of two thousand dollars, it shall, within thirty
27 days after the date it shall have received total contri-
28 butions in excess of seven thousand five hundred dol-
29 lars, register with and report to the department as re-
30 quired by this article;

31 (4) Hospitals which are nonprofit and charitable;

32 (5) Organizations which solicit only within the mem-
33 bership of the organization by the members thereof.

34 The term "membership" shall not include those persons
35 who are granted a membership upon making a contribu-
36 tion as the result of solicitation; or

37 (6) A local post, camp, chapter or similarly designated
38 element or a county unit of such elements of a bona fide
39 veterans' organization which issues charters to such local
40 elements throughout this state, a bona fide organization of
41 volunteer firemen, a bona fide ambulance association or
42 bona fide rescue squad association or a bona fide auxiliary
43 or affiliate of any such organization, provided all its fund-

44 raising activities are carried on by members of such an
45 organization or an affiliate thereof, and such members
46 receive no compensation directly or indirectly therefor.

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

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

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

8 (b) For purposes of this section the total moneys,
9 funds, pledges or other property raised or received shall
10 not include the actual cost to the charitable organization
11 or professional solicitor of goods sold or service provided
12 to the public in connection with the soliciting of con-
13 tributions.

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

19 (d) Every contract or a written statement of the nature
20 of the arrangement to prevail in the absence of a contract
21 between a professional solicitor and a charitable organi-
22 zation shall be filed with the secretary of the state within
23 ten days after such contract or written agreement is

24 concluded. If the contract or arrangement with a pro-
25 fessional solicitor does not provide for compensation on a
26 percentage basis, the commission shall examine the con-
27 tract to ascertain whether the compensation to be paid in
28 such circumstances is likely to exceed fifteen percent
29 of the total moneys, pledges or other property raised
30 or received as a result of the contract or arrangement;
31 if the reasonable probabilities are that the compensa-
32 tion will exceed fifteen percent of the total moneys,
33 pledges or other property, the secretary of state shall
34 disapprove the contract or arrangement within ten days
35 after its filing. No registered charitable organization or
36 professional solicitor shall carry out or execute a dis-
37 approved contract, or receive or perform services, or
38 receive or make payments, pursuant to a disapproved
39 contract. Any party to a disapproved contract shall, upon
40 written request made within thirty days of disapproval,
41 be given a hearing before the commission within thirty
42 days after such request is filed.

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

1 No charitable organizations subject to this article may
2 solicit funds from the public except for charitable pur-
3 poses or expend funds raised for charitable purposes
4 for noncharitable purposes.

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

1 (a) No person may act as a professional fund-raising
2 counsel or professional solicitor for a charitable organi-
3 zation subject to the provisions of this article, unless he
4 has first registered with the secretary of state. Applica-
5 tions for such registration shall be in writing under oath
6 or affirmation in the form prescribed by the secretary of
7 state and contain such information as the commission
8 may require. The application for registration by pro-
9 fessional fund-raising counsel or professional solicitor
10 shall be accompanied by an annual fee in the sum of
11 fifty dollars. A partnership or corporation, which is a
12 professional fund-raising counsel or professional solicitor,
13 may register for and pay a single fee on behalf of all its
14 members, officers, agents and employees. However, the

15 names and addresses of all officers, agents and employees
16 of professional fund-raising counsel and all professional
17 solicitors, their officers, agents, servants or employees
18 employed to work under the direction of a professional
19 solicitor must be listed in the application.

20 (b) The applicant shall, at the time of making applica-
21 tion, file with and have approved by the secretary of
22 state a bond in which the applicant shall be the principal
23 obligor in the sum of ten thousand dollars with one or
24 more sureties satisfactory to the secretary of state, whose
25 liability in the aggregate as such sureties will at least
26 equal the said sum and maintain said bond in effect so long
27 as a registration is in effect. The bond shall run to the state
28 for the use of the secretary of state and any person who may
29 have a cause of action against the obligor of said bonds
30 for any losses resulting from malfeasance, nonfeasance
31 or misfeasance in the conduct of solicitation activities.
32 A partnership or corporation which is a professional
33 fund-raising counsel or professional solicitor may file
34 a consolidated bond on behalf of all its members, officers
35 and employees.

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

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

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

1 Registration statements and applications, reports,
2 professional fund-raising counsel contracts or professional

3 solicitor contracts, and all other documents and informa-
4 tion required to be filed under this article or by the
5 secretary of state or by the commission shall become
6 public records in the office of the secretary of state, and
7 shall be open to the general public for inspection at such
8 time and under such conditions as the secretary of state
9 may prescribe.

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

1 Every charitable organization subject to the provisions
2 of this article shall, in accordance with the rules and
3 regulations prescribed by the commission, keep true
4 fiscal records as to its activities in this state as may
5 be covered by this article in such form as will enable it
6 accurately to provide the information required by this
7 article. Upon demand, such records shall be made avail-
8 able to the secretary of state, the commission or the at-
9 torney general for inspection. Such records shall be re-
10 tained for a period of at least three years after the end
11 of the period of registration to which they relate.

§29-19-12. Reciprocal agreements.

1 The secretary of state may enter into reciprocal agree-
2 ments with the appropriate authority of any other state
3 for the purpose of exchanging information with respect to
4 charitable organizations, professional fund-raising coun-
5 sel and professional solicitors. Pursuant to such agree-
6 ments the secretary of state may accept information filed
7 by a charitable organization, professional fund-raising
8 counsel or professional solicitor with the appropriate
9 authority of another state in lieu of the information re-
10 quired to be filed in accordance with the provisions of
11 this article, if such information is substantially similar to
12 the information required under this article. The secre-
13 tary of state shall also grant exemption from the require-
14 ment for the filing of annual registration statement with
15 the secretary of state to charitable organizations orga-
16 nized under the laws of another state having their principal
17 place of business outside of this state whose funds are
18 derived principally from sources outside the state and

19 which have been granted exemption from the filing of
20 registration statements by the state under whose laws
21 they are organized if such state has a statute similar in
22 substance to the provisions of this article.

§29-19-13. Prohibited acts.

1 (a) No charitable organization, professional fund-
2 raising counsel or professional solicitor, subject to the
3 provisions of this article, may use or exploit the fact
4 of registration so as to lead the public to believe that
5 such registration in any manner constitutes an endorse-
6 ment or approval by the state. The use of the following
7 statement shall not be deemed a prohibited exploitation:
8 "Registered with the secretary of state as required by
9 law. Registration does not imply endorsement of a pub-
10 lic solicitation for contributions."

11 (b) No person may, in connection with the solicita-
12 tion of contributions for or the sale of goods or services
13 of a person other than a charitable organization, mis-
14 represent to or mislead anyone by any manner, means,
15 practice or device whatsoever, to believe that the person
16 on whose behalf such solicitation or sale is being con-
17 ducted is a charitable organization or that the proceeds
18 of such solicitation or sale will be used for charitable
19 purposes, if such is not the fact.

20 (c) No person may in connection with the solicitation
21 of contributions or the sale of goods or services for
22 charitable purposes represent to or lead anyone by any
23 manner, means, practice or device whatsoever, to believe
24 that any other person sponsors or endorses such solicita-
25 tion of contributions, sale of goods or services for chari-
26 table purposes or approves of such charitable purposes
27 of a charitable organization connected therewith when
28 such other person has not given consent to the use of his
29 name for these purposes; any member of the board
30 of directors or trustees of a charitable organization
31 or any other person who has agreed either to serve or
32 to participate in any voluntary capacity in the campaign
33 shall be deemed thereby to have given his consent to
34 the use of his name in said campaign.

35 (d) No person may make any representation that he
36 is soliciting contributions for or on behalf of a charitable
37 organization or shall use or display any emblem, device
38 or printed matter belonging to or associated with a chari-
39 table organization for the purpose of soliciting or in-
40 ducing contributions from the public without first being
41 authorized to do so by the charitable organization.

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

45 (1) Written authorization of two officers of such or-
46 ganization, a copy of which shall be filed with the secre-
47 tary of state. Such written authorization shall bear
48 the signature of the solicitor and shall expressly
49 state on its face the period for which it is valid,
50 which shall not exceed one year from the date is-
51 sued; and

52 (2) Such authorization with him when making solici-
53 tations and exhibits the same on request to persons so-
54 licited 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.**

1 Any charitable organization or professional fund-
2 raising counsel or professional solicitor having its or his
3 principal place of business without the state, or organized
4 under and by virtue of the laws of a foreign state, which
5 or who shall solicit contributions from people in this
6 state, is subject to the provisions of this article and shall
7 be deemed to have irrevocably appointed the secretary
8 of state as its or his agent upon whom may be served
9 any summons, subpoena, subpoena duces tecum or other
10 process directed to such charitable organization, profes-
11 sional fund-raising counsel or professional solicitor or
12 any partner, principal officer or director thereof in any
13 action or proceeding brought under the provisions of
14 this article. Service of such process upon the secretary
15 of state shall be made by personally delivering to and

16 leaving with him a copy thereof, and such service shall
17 be sufficient service provided that notice of such service
18 and a copy of such process are forthwith sent by the
19 attorney general to such charitable organization or pro-
20 fessional fund-raising counsel or professional solicitor by
21 registered or certified mail with return receipt requested
22 at its or his office, as set forth in the registration form
23 required to be filed with the secretary of state pursuant
24 to this article or in default of the filing of such form, at
25 the last address known to the attorney general or to the
26 secretary of state.

§29-19-15. Enforcement and penalties.

1 (a) If any charitable organization, professional fund-
2 raising counsel or professional solicitor fails to file any
3 registration application or statement, report or other
4 information required to be filed by the secretary of state
5 or the commission under this article, or otherwise violates
6 the provisions of this act, the department shall notify
7 the delinquent charitable organization, professional fund-
8 raising counsel or professional solicitor by mailing a
9 notice by registered or certified mail, with return receipt
10 requested, to its or his last-known address. If the re-
11 quired registration application or statement, annual re-
12 port or other information is not filed or if the existing
13 violation is not discontinued within two weeks after the
14 formal notification or receipt of such notice, the com-
15 mission may cancel, suspend or refuse to accept the
16 registration of such delinquent charitable organization,
17 professional fund-raising counsel or professional solicitor.

18 (b) The commission, upon its own motion or upon
19 complaint of any person, may, if it has reasonable ground
20 to suspect a violation, investigate any charitable orga-
21 nization, professional fund-raising counsel or professional
22 solicitor to determine whether such charitable organiza-
23 tion, professional fund-raising counsel or professional
24 solicitor has violated the provisions of this article or
25 has filed any application or other information required
26 under this article which contains false or misleading
27 statements. If the commission finds that any applica-
28 tion or other information contains false or misleading

29 statements, or that a registrant under this article has
30 violated the provisions thereof, it may recommend to
31 the secretary of state that the registration be suspended
32 or canceled and the secretary of state may so order.

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

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

45 (e) In addition to the foregoing, any person who
46 willfully and knowingly violates any provisions of this
47 article, or who shall willfully and knowingly give false
48 or incorrect information to the secretary of state in filing
49 statements or reports required by this article, whether such
50 report or statement is verified or not, shall be guilty of a
51 misdemeanor, and, upon conviction thereof, shall be sen-
52 tenced for the first offense to pay a fine of not less than one
53 hundred dollars and not more than five hundred dollars
54 or be imprisoned for not more than six months, or both,
55 and for the second and any subsequent offense to pay
56 a fine of not less than five hundred dollars and not more
57 than one thousand dollars or be imprisoned for not
58 more than one year, or both.

59 (f) Whenever the attorney general or any prosecuting
60 attorney has reason to believe that any charitable orga-
61 nization, professional fund-raising counsel or professional
62 solicitor is operating in violation of the provisions of
63 this article or has knowingly and willfully made any
64 false statement in any registration application or state-
65 ment, report or other information required to be filed
66 by this article or whenever a charitable organization,
67 professional fund-raising counsel or professional solicitor
68 has failed to file a registration statement required by

69 this article, or whenever there is employed or is about
70 to be employed in any solicitation or collection of con-
71 tributions for a charitable organization any device,
72 scheme or artifice to defraud or to obtain money or
73 property by means of any false pretense, representation
74 or promise, or whenever the officers or representatives
75 of any charitable organization, professional fund-raising
76 counsel or professional solicitor have refused or failed
77 after notice to produce any records of such organization,
78 or whenever the funds raised by solicitation activities
79 are not devoted or will not be devoted to the charitable
80 purposes of the charitable organization, in addition to
81 all other actions authorized by law, the attorney general
82 or prosecuting attorney may bring an action in the name
83 of the state against such charitable organization and its
84 officers, such professional fund-raising counsel or pro-
85 fessional solicitor or any other person who has violated
86 this article or who has participated or is about to par-
87 ticipate in any solicitation or collection by employing
88 any device, scheme, artifice, false representation or
89 promise, to defraud or obtain money or other property,
90 to enjoin such charitable organization or professional
91 fund-raising counsel or professional solicitor or other
92 person from continuing such violation, solicitation or
93 collection, or engaging therein or doing any acts in fur-
94 therance thereof and for such other relief as the court
95 deems appropriate.

96 (g) In addition to the foregoing, any charitable orga-
97 nization, professional fund-raising counsel or professional
98 solicitor who willfully and knowingly violates any pro-
99 visions of this article by employing any device, scheme,
100 artifice, false representation or promise with intent to
101 defraud or obtain money or other property shall be
102 guilty of a misdemeanor, and, upon conviction thereof,
103 for a first offense, be fined not less than one hundred
104 dollars and not more than five hundred dollars or con-
105 fined in the county jail not more than six months, or
106 both; and for a second and any subsequent offense shall
107 be fined not less than five hundred dollars and not more

108 than one thousand dollars or confined in the county jail
109 not more than one year, or both.

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

114 If the court finds that the said contributions are readily
115 returnable to the original contributors, it may order the
116 money to be placed in the custody and control of a
117 general receiver, appointed pursuant to the provisions
118 of article six, chapter fifty-one of this code who shall be
119 responsible for its proper disbursement to such contribu-
120 tors.

121 If the court finds that (1) it is impossible to obtain
122 the names of over one half the persons who were solicited
123 and in violation of this article, or (2) if the majority of
124 individual contributions were less than five dollars, or
125 (3) if the cost to the state of returning these contribu-
126 tions is equal to or more than the total sum to be re-
127 funded, the court shall order the money to be placed
128 in the custody and control of a general receiver ap-
129 pointed pursuant to the provisions of article six, chapter
130 fifty-one of this code. The general receiver shall main-
131 tain this money pursuant to the provisions of article
132 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. Chestnut Jr.
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1977.

J. Miller, Jr.
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

H. B. ...
President of the Senate

Donald L. Kopp
Speaker House of Delegates

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

[Signature]
Governor

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APR 18 4 06 PM '77
OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date April 24, 1977
Time 2:00 p.m.

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OFFICE
GOVERNOR OF STATE