WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985

ENROLLED
Committee Substitute
SENATE BILL NO. 613

(By Mr. [Signature])

PASSED April 3, 1985
In Effect ninety days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 613
(BY MR. BOETTNER, original sponsor)
(Originating in the Committee on the Judiciary.)

[Passed April 13, 1985; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, three, five, six, seven, nine, eleven, thirteen and fifteen, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to solicitation of charitable funds; definitions; reallocating powers and duties of commission on charitable organizations and secretary of state; registration of charitable organizations; filing of solicitation contracts; removing fifteen percent limitation on payments for solicitation activities; prohibited acts, enforcement and penalties.

Be it enacted by the Legislature of West Virginia:

That sections two, three, five, six, seven, nine, eleven, thirteen and fifteen, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

1 As used in this article:

2 (1) “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 such 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. This definition does not include religious organizations or any group affiliated with and forming an integral part of said organization of which no part of the net income inures to the direct benefit of any individual and which have received a declaration of current tax exempt status from the government of the United States nor does this definition include any single church congregation located in the county or local congregation of any religious affiliation or any community youth athletic organization or any community civic or service club. No such affiliated group may be required to obtain such declaration if the parent or principal organization shall have obtained same.

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

4 (3) “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.

5 (4) “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.
(5) "Person" means any individual, organization, trust, foundation, group, association, partnership, corporation, 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 said 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 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 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, shall be considered, as the result of such advice, to be a professional fund-raising counsel or a professional solicitor.

(3) "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, including the secretary of state or his designate, who shall
be the chairman, the attorney general or his designate, the
commissioner of welfare or his designate, 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 serve as body advisory to the
secretary of state and, as such, shall have the following
powers and duties:

(1) To hold hearings and make adjudications as
provided in section nine and section fifteen of this article;
(2) To advise and make recommendations to the
secretary of state on policies and practices to effect the
purposes of this article;
(3) To request that the attorney general, and, when
appropriate, the prosecuting attorney of any county, take
action to enforce this article or protect the public from any
fraudulent scheme or criminal act;
(4) To meet at the request of the secretary of state or
pursuant to regulations promulgated by him. Minutes of
each meeting shall be public records and filed with the
secretary of state.

(c) The secretary of state shall administer this article,
preserve forms for registration or other purposes, and
promulgate rules and regulations in furtherance of this
article in accordance with the provisions of chapter twenty-
nine-a of this code.

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

(a) Every charitable organization which intends to
solicit contributions within this state or to have funds
solicited on its behalf shall, prior to any solicitation, file a
registration statement with the secretary of state upon
forms prescribed by him, 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;

(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 for the organization's immediately preceding fiscal year, or a copy of a financial statement 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 including the amounts raised in the state and the percentage of that amount that remains in the state: Provided, That for organizations raising more than fifty thousand dollars per year in contributions, the balance sheet and income and expense statement, or financial statement provided shall be audited by an independent public accountant.

(7) A copy of any determination of the organization's tax-exempt status under section 501 of the Internal Revenue Code 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 from the public directly or have such done on its behalf by others;

(9) 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;

(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; and
(13) The names of the individuals or officers of the
organization responsible for the final distribution of the
contributions.
(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 article independently, unless
specifically exempted from doing so.
(c) The registration forms and any other documents
prescribed by the secretary of state 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.
(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.
§29-19-6. Certain persons and organizations exempt from
registration.
(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.
Charitable organizations which do not intend to solicit and
receive in excess of seven thousand five hundred dollars,
but do receive in excess of that amount from the public,
shall file the annual registration statement within thirty
days after contributions in excess of seven thousand five
hundred dollars.

(4) Hospitals which are nonprofit and charitable;

(5) Organizations which solicit only within the
membership of the organization by the members thereof:
Provided, That 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 him 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 exemption which may be
exhibited to the public. No registration fee shall be required of any exempt organization.

§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 with the secretary of state within ten days after such contract or agreement is concluded.

(b) Every written contract or agreement between a professional solicitor and a charitable organization shall be filed with the secretary of state within ten days after such agreement is concluded. 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. If it does not so provide, 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 arrangement or perform services, or receive or make payments, pursuant to a disapproved contract or arrangement. Any party to a disapproved contract or arrangement 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.

(d) 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 services provided to the public in connection with the soliciting of contributions.

§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 he 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 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 ten thousand dollars 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 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 under oath in the form prescribed by the secretary of state 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.

§29-19-11. 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 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, 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.


(a) No charitable organization, professional fund-raising counsel or professional solicitor subject to the provisions of this article who is required to register with the secretary of state pursuant to the provisions of this article whose registration has been cancelled, suspended, or refused may solicit contributions from the public.

(b) 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.

(c) 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
(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 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 consent to the use of his name in said campaign.

(e) 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.

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

1. 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 shall not exceed one year from the date issued; and
2. Carries such authorization on his person when making solicitations and exhibits the same on request to persons solicited or police officers or agents of the secretary of state.


1. (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 under this article, or otherwise violates the provisions of this act, the secretary of state 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 required registration application or statement, annual report 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 secretary of state may cancel, suspend or refuse to accept the registration of such delinquent charitable organization, professional fund-raising counsel or professional solicitor.

(b) The secretary of state, upon his own motion, upon request of the commission, or upon complaint of any person, may, if he 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. If the commission finds that any application 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 fined upon first conviction thereof in an amount not less than one hundred dollars nor more than five hundred dollars, 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 five hundred dollars nor more than one thousand dollars, or be imprisoned for not more than one year, or be both fined and imprisoned.

(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 contributions 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 professional solicitor or any other person who has violated this article or who has participated or is about to participate 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 from engaging therein or from doing any acts in furtherance thereof and for such other relief as the court deems appropriate.

(g) 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 one hundred dollars nor more than five hundred dollars, 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 five hundred dollars nor more than one thousand dollars, 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 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 five dollars, 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within .............. this the ..............
day of .............. 1985.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/19/85
Time 8:50pm.