WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986

ENROLLED
Committee Substitute for
HOUSE BILL No. 1738

(By Delegate Hamilton and Delegate Chambers)

Passed March 8, 1986

In Effect ninety days from Passage
AN ACT to amend and reenact sections two, three, four, five, six, eight, nine, thirteen, fourteen and fifteen, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section one-a, all relating to the solicitation of charitable funds act; definitions; commission on charitable organizations; powers and duties; compensation of members; expenses; registration of charitable organizations; fees; exemptions; limitation on activities of charitable organizations; registration of professional fund-raising counsel and professional solicitors; bonds; records and books; prohibited acts; 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; enforcement and penalties.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, eight, nine, thirteen, fourteen and fifteen, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-
ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-1a. General purpose.

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


As used in this article:

(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 purpose of this article.

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

(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.

(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
Enr. Com. Sub. for H. B. 1738] 4

65 a professional solicitor.

66 (8) “Commission” means the commission on charitable
organizations herein created.

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

1 (a) The commission on charitable organizations,
herein referred to as the “commission,” consists of seven
members, including the secretary of state or his or her
designate, who shall be the chairman, the attorney
general or his or her designate, the commissioner of
human services or his or her designate, the director of
the state department of health or his or her designate,
and three members to be appointed by the governor who
shall serve at his will and pleasure.

10 (b) The commission shall serve as body advisory to the
secretary of state and, as such, shall have the following
powers and duties:

13 (1) To hold hearings and make adjudications as
provided in section nine and section fifteen of this
article;

16 (2) To advise and make recommendations to the
secretary of state on policies and practices to effect the
purposes of this article;

19 (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;

23 (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.

27 (c) The secretary of state shall administer this article,
prescribe 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.

§29-19-4. Compensation of members; expenses of
No member of the commission may receive any compensation, whether in the form of salary, per diem allowance or otherwise, for or in connection with his or her 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 or her 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; fee.

(a) Every charitable organization except as provided in section six of this article 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 or her, 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 contribu-
tions 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. Each organization shall file a separate registration form for each name under which funds will be solicited.

(c) The registration forms and any other documents prescribed by the secretary of state shall be signed by an authorized 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 collecting less than one million dollars during any year which submits an independent registration to the secretary of state shall pay an annual registration fee of fifteen dollars; every charitable organization collecting more than one million dollars during one year which submits an independent registration to the secretary of state shall pay an annual registration fee of fifty dollars; a parent organization filing on behalf of one or more chapters, branches or affiliates or a single organization filing under different names shall pay a single annual registration fee of fifty dollars for itself and such chapters, branches or affiliates 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; and any auxiliary associ-
lations, foundations and support groups which are
directly responsible to any such educational institutions;

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

(3) Hospitals which are nonprofit and charitable;

(4) Organizations which solicit only within the mem-
bership 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. For
the purpose of this section, “member” means a person
having membership in a nonprofit corporation, or other
organization, in accordance with the provisions of its
articles of incorporation, bylaws or other instruments
creating its form and organization; and, having bona
fide rights and privileges in the organization, such as
the right to vote, to elect officers, directors and issues,
to hold office or otherwise as ordinarily conferred on
members of such organizations.

(5) Religious organizations, churches or any group
affiliated with and forming an integral part of these
organizations of which no part of the net income inures
to the direct benefits of any individual and which have
received a declaration of current tax-exempt status from
the government of the United States.

(b) The following charitable organizations are exempt
from filing an annual registration statement with the
secretary of state if they do not employ a professional
solicitor or fund-raiser or do not intend to solicit and
receive and do not actually raise or receive contributions
from the public in excess of ten thousand dollars during
a calendar year:

(1) Local youth athletic organizations;
(2) Community civic clubs;
(3) Community service clubs;
(4) Fraternal organizations;

(5) Labor unions;

(6) Local posts, camps, chapters or similarly designated elements or county units of such elements of bona fide veterans organizations or auxiliaries which issue charters to such local elements throughout the state;

(7) Bona fide organizations of volunteer firemen or auxiliaries;

(8) Bona fide ambulance associations or auxiliaries;

(9) Bona fide rescue squad associations or auxiliaries.

Charitable organizations which do not intend to solicit and receive in excess of ten thousand dollars, but do receive in excess of that amount from the public, shall file the annual registration statement within thirty days after contributions are in excess of ten thousand dollars.


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.

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

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

Organizations applying for registration shall be reviewed according to objective standards, including, but not limited to, the following:

(a) Charitable organizations shall include in each solicitation a clear description of programs for which funds are requested and source from which written information is available. Expenditures shall be related in a primary degree to stated purpose (programs and activities) described in solicitations and in accordance with reasonable donor expectations.

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

(c) Charitable organizations shall substantiate a valid governing structure and members shall comply with the provisions for conflict of interest as defined in section twenty-five, article one, chapter thirty-one of this code.

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

(e) Every printed solicitation shall include the following statement: “A copy of the official registration and supporting documents may be obtained from the West Virginia Secretary of State, State Capitol, Charleston, West Virginia 25305. Registration does not imply endorsement.”

§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 organ-
ization subject to the provisions of this article, unless he
or she 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 or
she may require. The application for registration by
professional fund-raising counsel or professional solici-
tor 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 shall 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 solici-
tor 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 or her designate shall
examine each application, and if he or she finds it to be
in conformity with the requirements of this article and
all relevant rules and regulations and the registrant has
complied with the requirements of this article and all
relevant rules and regulations, he or she 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.


(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:
“A copy of the official registration and supporting
documents may be obtained from the West Virginia
Secretary of State, State Capitol, Charleston, West
Virginia 25305. Registration does not imply
endorsement.”

(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, misre-
represent 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.

(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 there-with when such other person has not given consent to the use of his or her name for these purposes: Provided, That any member of the board of directors or trustees of a charitable organization or any other person who has agreed either to serve or to participate in any voluntary capacity in the campaign shall be deemed thereby to have given his or her consent to the use of his or her name in said campaign.

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

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

(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 or her person 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
or her principal place of business without the state, or
organized under and by virtue of the laws of a foreign
state, which or who shall solicit contributions from
people in this State, is subject to the provisions of this
article and shall be deemed to have irrevocably ap-
pointed the secretary of state as its or his or her agent
upon whom may be served any summons, subpoena,
subpoena duces tecum or other process directed to such
charitable organization, professional fund-raising
counsel or professional solicitor or any partner, prin-
cipal officer or director thereof in any action or proceed-
ing 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 professional fund-
raising counsel or professional solicitor by registered or
certified mail with return receipt requested at its or his
or her office, as set forth in the registration form
required to be filed with the secretary of state pursuant
to this article or in default of the filing of such form,
at the last address known to the 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
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 or her 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 or her own motion,
upon request of the commission, or upon complaint of
any person, may if he or she finds reasonable ground
to suspect a violation, investigate any charitable
organization, professional fund-raising counsel or
professional solicitor to determine whether such charit-
able 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 provisions thereof, it may recom-
mend to the secretary of state that the registration be
suspended or cancelled and the secretary of state may
so order.

(c) The registration of any charitable organization,
professional fund-raising counsel or professional solici-
tor, which or who knowingly makes a false or mislead-
ing statement in any registration application or state-
ment, 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
wilfully and knowingly violates any provision of this
article, or who shall wilfully 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 wilfully 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 wilfully 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

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within bill is hereby approved this the 26th day of , 1986.

Governor