

710: 1738

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

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ENROLLED

Committee Substitute for
HOUSE BILL No. 1738

(By ☒ Delegate Hamilton + Delegate Chambers

— ● —

Passed March 8, 1986

In Effect ninety days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 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-

one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section one-a, all to read as follows:

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-1a. General purpose.

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

§29-19-2. Definitions.

1 As used in this article:

2 (1) "Charitable organization" means a person who is
3 or holds itself out to be a benevolent, educational,
4 philanthropic, humane, patriotic, religious or eleemosy-
5 nary organization, or any person who solicits or obtains
6 contributions solicited from the public for charitable
7 purposes, or any person who in any manner employs any
8 appeal for contributions which may be reasonably
9 interpreted to suggest that such contributions will be
10 used for charitable purposes. A chapter, branch, area,
11 office or similar affiliate or any person soliciting
12 contributions within the state for a charitable organiza-
13 tion which has its principal place of business outside the
14 state is a charitable organization for the purpose of this
15 article.

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

18 (3) "Federated fund-raising organization" means a
19 federation of independent charitable organizations
20 which have voluntarily joined together, including, but
21 not limited to, a united fund or community chest, for
22 purposes of raising and distributing money for and
23 among themselves and where membership does not
24 confer operating authority and control of the individual

25 agencies upon the federated group organization.

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

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

34 (6) "Professional fund-raising counsel" means any
35 person who for a flat fixed fee under a written
36 agreement plans, conducts, manages, carries on, advises
37 or acts as a consultant, whether directly or indirectly,
38 in connection with soliciting contributions for, or on
39 behalf of any charitable organization but who actually
40 solicits no contributions as a part of such services. A
41 bona fide salaried officer or employee of a charitable
42 organization maintaining a permanent establishment
43 within the state shall not be deemed to be a professional
44 fund-raising counsel.

45 (7) "Professional solicitor" means any person who, for
46 a financial or other consideration, solicits contributions
47 for, or on behalf of a charitable organization, whether
48 such solicitation is performed personally or through said
49 person's agents, servants or employees specially em-
50 ployed by, or for a charitable organization, who are
51 engaged in the solicitation of contributions under the
52 direction of such person, or a person who plans,
53 conducts, manages, carries on, advises or acts as a
54 consultant to a charitable organization in connection
55 with the solicitation of contributions but does not qualify
56 as "professional fund-raising counsel" within the
57 meaning of this article. A bona fide salaried officer or
58 employee of a charitable organization maintaining a
59 permanent establishment within the state is not a
60 professional solicitor.

61 No attorney, investment counselor or banker, who
62 advises any person to make a contribution to a charit-
63 able organization, shall be considered, as the result of
64 such advice, to be a professional fund-raising counsel or

65 a professional solicitor.

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

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

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

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

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

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

19 (3) To request that the attorney general, and, when
20 appropriate, the prosecuting attorney of any county,
21 take action to enforce this article or protect the public
22 from any fraudulent scheme or criminal act;

23 (4) To meet at the request of the secretary of state or
24 pursuant to regulations promulgated by him. Minutes of
25 each meeting shall be public records and filed with the
26 secretary of state.

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

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

commission.

1 No member of the commission may receive any
2 compensation, whether in the form of salary, per diem
3 allowance or otherwise, for or in connection with his or
4 her services as a member. Each member, however, is
5 entitled to reimbursement by the commission for all
6 reasonable and necessary expenses actually incurred in
7 connection with the performance of his or her duties as
8 a member.

9 The expenses of the members and the general oper-
10 ating expenses of the commission shall be paid from
11 moneys appropriated by the Legislature for those
12 purposes.

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

1 (a) Every charitable organization except as provided
2 in section six of this article which intends to solicit
3 contributions within this state or to have funds solicited
4 on its behalf shall, prior to any solicitation, file a
5 registration statement with the secretary of state upon
6 forms prescribed by him or her, which shall be good for
7 one full year and which shall be refiled in the next and
8 each following year in which such charitable organiza-
9 tion is engaged in solicitation activities. It shall be the
10 duty of the president, chairman or principal officer of
11 such charitable organization to file the statements
12 required under this article. Such statements shall be
13 sworn to and shall contain the following information:

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

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

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

22 (4) The place where and the date when the organiza-
23 tion was legally established, the form of its organization;

24 (5) The names and addresses of the officers, directors,

25 trustees and the principal salaried executive staff
26 officer;

27 (6) A copy of a balance sheet and income and expense
28 statement for the organization's immediately preceding
29 fiscal year, or a copy of a financial statement covering,
30 in a consolidated report, complete information as to all
31 the preceding year's fund-raising activities of the
32 charitable organization, showing kind and amount of
33 funds raised, costs and expenses incidental thereto, and
34 allocation or disbursement of funds raised including the
35 amounts raised in the state and the percentage of that
36 amount that remains in the state: *Provided*, That for
37 organizations raising more than fifty thousand dollars
38 per year in contributions, the balance sheet and income
39 and expense statement, or financial statement provided
40 shall be audited by an independent public accountant;

41 (7) A copy of any determination of the organization's
42 tax-exempt status under section 501 of the Internal
43 Revenue Code and a copy of the last filed Internal
44 Revenue Service form 990 and Schedule A for every
45 charitable organization and any parent organization;

46 (8) Whether the organization intends to solicit contri-
47 butions from the public directly or have such done on
48 its behalf by others;

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

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

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

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

60 (13) The names of the individuals or officers of the
61 organization responsible for the final distribution of the
62 contributions.

63 (b) Each chapter, branch or affiliate, except an
 64 independent member agency of a federated fund-raising
 65 organization, may separately report the information
 66 required by this subsection, or report the information to
 67 its parent organization which shall then furnish such
 68 information as to its West Virginia affiliates, chapters
 69 and branches in a consolidated form to the secretary of
 70 state. An independent member agency of a federated
 71 fund-raising organization, as hereinbefore defined, shall
 72 comply with the provisions of this article independently.
 73 Each organization shall file a separate registration form
 74 for each name under which funds will be solicited.

75 (c) The registration forms and any other documents
 76 prescribed by the secretary of state shall be signed by
 77 an authorized officer or by an independent public
 78 accountant and by the chief fiscal officer of the
 79 charitable organization and shall be verified under oath.

80 (d) Every charitable organization collecting less than
 81 one million dollars during any year which submits an
 82 independent registration to the secretary of state shall
 83 pay an annual registration fee of fifteen dollars; every
 84 charitable organization collecting more than one million
 85 dollars during one year which submits an independent
 86 registration to the secretary of state shall pay an annual
 87 registration fee of fifty dollars; a parent organization
 88 filing on behalf of one or more chapters, branches or
 89 affiliates or a single organization filing under different
 90 names shall pay a single annual registration fee of fifty
 91 dollars for itself and such chapters, branches or
 92 affiliates included in the registration statement.

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

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

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

9 ations, foundations and support groups which are
10 directly responsible to any such educational institutions;

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

16 (3) Hospitals which are nonprofit and charitable;

17 (4) Organizations which solicit only within the mem-
18 bership of the organization by the members thereof:
19 *Provided*, That the term "membership" shall not include
20 those persons who are granted a membership upon
21 making a contribution as the result of solicitation. For
22 the purpose of this section, "member" means a person
23 having membership in a nonprofit corporation, or other
24 organization, in accordance with the provisions of its
25 articles of incorporation, bylaws or other instruments
26 creating its form and organization; and, having bona
27 fide rights and privileges in the organization, such as
28 the right to vote, to elect officers, directors and issues,
29 to hold office or otherwise as ordinarily conferred on
30 members of such organizations.

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

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

44 (1) Local youth athletic organizations;

45 (2) Community civic clubs;

46 (3) Community service clubs;

47 (4) Fraternal organizations;

48 (5) Labor unions;

49 (6) Local posts, camps, chapters or similarly desig-
50 nated elements or county units of such elements of bona
51 fide veterans organizations or auxiliaries which issue
52 charters to such local elements throughout the state;

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

55 (8) Bona fide ambulance associations or auxiliaries;

56 (9) Bona fide rescue squad associations or auxiliaries.

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

**§29-19-8. Limitations on activities of charitable organiza-
tions .**

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

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

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

21 part of the solicitation materials.

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

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

32 (b) Charitable organizations shall establish and
33 exercise controls over fund-raising activities conducted
34 for the organizations' benefit, including written con-
35 tracts and agreements and assurance of fund-raising
36 activities without excessive pressure.

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

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

48 (e) Every printed solicitation shall include the follow-
49 ing statement: "A copy of the official registration and
50 supporting documents may be obtained from the West
51 Virginia Secretary of State, State Capitol, Charleston,
52 West Virginia 25305. Registration does not imply
53 endorsement."

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

1 (a) No person may act as a professsional fund-raising
2 counsel or professional solicitor for a charitable organ-

3 ization subject to the provisions of this article, unless he
4 or she has first registered with the secretary of state.
5 Applications for such registration shall be in writing
6 under oath or affirmation in the form prescribed by the
7 secretary of state and contain such information as he or
8 she may require. The application for registration by
9 professional fund-raising counsel or professional solicitor
10 shall be accompanied by an annual fee in the sum
11 of fifty dollars. A partnership or corporation, which is
12 a professional fund-raising counsel or professional
13 solicitor, may register for and pay a single fee on behalf
14 of all its members, officers, agents and employees.
15 However, the names and addresses of all officers, agents
16 and employees of professional fund raising counsel and
17 all professional solicitors, their officers, agents, servants
18 or employees employed to work under the direction of
19 a professional solicitor shall be listed in the application.

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

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

42 (d) The secretary of state or his or her designate shall
43 examine each application, and if he or she finds it to be

44 in conformity with the requirements of this article and
45 all relevant rules and regulations and the registrant has
46 complied with the requirements of this article and all
47 relevant rules and regulations, he or she shall approve
48 the registration. Any applicant who is denied approved
49 registration may, within fifteen days from the date of
50 notification of such denial, request, in writing, a hearing
51 before the commission, which hearing shall be held
52 within fifteen days from the date of the request.

§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 who is required to register with
4 the secretary of state pursuant to the provisions of this
5 article whose registration has been cancelled, suspended
6 or refused may solicit contributions from the public.

7 (b) No charitable organization, professional fund-
8 raising counsel or professional solicitor subject to the
9 provisions of this article may use or exploit the fact of
10 registration so as to lead the public to believe that such
11 registration in any manner constitutes an endorsement
12 or approval by the state. The use of the following
13 statement shall not be deemed a prohibited exploitation:
14 "A copy of the official registration and supporting
15 documents may be obtained from the West Virginia
16 Secretary of State, State Capitol, Charleston, West
17 Virginia 25305. Registration does not imply
18 endorsement."

19 (c) No person may, in connection with the solicitation
20 of contributions for or the sale of goods or services of
21 a person other than a charitable organization, misre-
22 present to or mislead anyone by any manner, means,
23 practice or device whatsoever, to believe that the person
24 on whose behalf such solicitation or sale is being
25 conducted is a charitable organization or that the
26 proceeds of such solicitation or sale will be used for
27 charitable purposes, if such is not the fact.

28 (d) No person may in connection with the solicitation
29 of contributions or the sale of goods or services for
30 charitable purposes represent to or lead anyone by any

31 manner, means, practice or device whatsoever, to
 32 believe that any other person sponsors or endorses such
 33 solicitation of contributions, sale of goods or services for
 34 charitable purposes or approves of such charitable
 35 purposes of a charitable organization connected there-
 36 with when such other person has not given consent to
 37 the use of his or her name for these purposes: *Provided,*
 38 That any member of the board of directors or trustees
 39 of a charitable organization or any other person who has
 40 agreed either to serve or to participate in any voluntary
 41 capacity in the campaign shall be deemed thereby to
 42 have given his or her consent to the use of his or her
 43 name in said campaign.

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

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

55 (1) Has obtained the written authorization of two
 56 officers of such organization, a copy of which shall be
 57 filed with the secretary of state. Such written author-
 58 ization shall bear the signature of the solicitor and shall
 59 expressly state on its face the period for which it is
 60 valid, which shall not exceed one year from the date
 61 issued; and

62 (2) Carries such authorization on his or her person
 63 when making solicitations and exhibits the same on
 64 request to persons solicited or police officers or agents
 65 of the secretary of state.

**§29-19-14. Nonresident charitable organizations, profes-
 sional 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 or her principal place of business without the state, or
4 organized under and by virtue of the laws of a foreign
5 state, which or who shall solicit contributions from
6 people in this State, is subject to the provisions of this
7 article and shall be deemed to have irrevocably ap-
8 pointed the secretary of state as its or his or her agent
9 upon whom may be served any summons, subpoena,
10 subpoena duces tecum or other process directed to such
11 charitable organization, professional fund-raising
12 counsel or professional solicitor or any partner, princi-
13 pal officer or director thereof in any action or proceed-
14 ing brought under the provisions of this article. Service
15 of such process upon the secretary of state shall be made
16 by personally delivering to and leaving with him a copy
17 thereof, and such service shall be sufficient service:
18 *Provided*, That notice of such service and a copy of such
19 process are forthwith sent by the attorney general to
20 such charitable organization or professional fund-
21 raising counsel or professional solicitor by registered or
22 certified mail with return receipt requested at its or his
23 or her office, as set forth in the registration form
24 required to be filed with the secretary of state pursuant
25 to this article or in default of the filing of such form,
26 at the last address known to the attorney general or to
27 the 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 under this article, or otherwise violates the provisions
6 of this act, the secretary of state shall notify the
7 delinquent charitable organization, professional fund-
8 raising counsel or professional solicitor by mailing a
9 notice by registered or certified mail, with return
10 receipt requested, to its or his or her last-known address.
11 If the required registration application or statement,
12 annual report or other information is not filed or if the
13 existing violation is not discontinued within two weeks

14 after the formal notification or receipt of such notice, the
15 secretary of state may cancel, suspend or refuse to
16 accept the registration of such delinquent charitable
17 organization, professional fund-raising counsel or
18 professional solicitor.

19 (b) The secretary of state, upon his or her own motion,
20 upon request of the commission, or upon complaint of
21 any person, may if he or she finds reasonable ground
22 to suspect a violation, investigate any charitable
23 organization, professional fund-raising counsel or
24 professional solicitor to determine whether such charit-
25 able organization, professional fund-raising counsel or
26 professional solicitor has violated the provisions of this
27 article or has filed any application or other information
28 required under this article which contains false or
29 misleading statements. If the commission finds that any
30 application or other information contains false or
31 misleading statements, or that a registrant under this
32 article has violated provisions thereof, it may recom-
33 mend to the secretary of state that the registration be
34 suspended or cancelled and the secretary of state may
35 so order.

36 (c) The registration of any charitable organization,
37 professional fund-raising counsel or professional solici-
38 tor, which or who knowingly makes a false or mislead-
39 ing statement in any registration application or state-
40 ment, report or other information required to be filed
41 by the secretary of state or this article, shall be revoked.

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

48 (e) In addition to the foregoing, any person who
49 wilfully and knowingly violates any provision of this
50 article, or who shall wilfully and knowingly give false
51 or incorrect information to the secretary of state in
52 filing statements or reports required by this article,
53 whether such report or statement is verified or not, shall

54 be guilty of a misdemeanor, and, upon conviction
55 thereof, shall be fined upon first conviction thereof in
56 an amount not less than one hundred dollars nor more
57 than five hundred dollars, or be imprisoned in the
58 county jail for not more than six months, or be both
59 fined and imprisoned, and for the second and any
60 subsequent offense to pay a fine of not less than five
61 hundred dollars nor more than one thousand dollars, or
62 be imprisoned for not more than one year, or be both
63 fined and imprisoned.

64 (f) Whenever the attorney general or any prosecuting
65 attorney has reason to believe that any charitable
66 organization, professional fund-raising counsel or
67 professional solicitor is operating in violation of the
68 provisions of this article, or has knowingly and wilfully
69 made any false statement in any registration application
70 or statement, report or other information required to be
71 filed by this article, or whenever a charitable organiza-
72 tion, professional fund-raising counsel or professional
73 solicitor has failed to file a registration statement
74 required by this article, or whenever there is employed
75 or is about to be employed in any solicitation or
76 collection of contributions for a charitable organization
77 any device, scheme or artifice to defraud or to obtain
78 money or property by means of any false pretense,
79 representation or promise, or whenever the officers or
80 representatives of any charitable organization, profes-
81 sional fund-raising counsel or professional solicitor have
82 refused or failed after notice to produce any records of
83 such organization, or whenever the funds raised by
84 solicitation activities are not devoted or will not be
85 devoted to the charitable purposes of the charitable
86 organization, in addition to all other actions authorized
87 by law, the attorney general or prosecuting attorney
88 may bring an action in the name of the state against
89 such charitable organization and its officers, such
90 professional fund-raising counsel or professional solici-
91 tor or any other person who has violated this article or
92 who has participated or is about to participate in any
93 solicitation or collection by employing any device,
94 scheme, artifice, false representation or promise, to
95 defraud or obtain money or other property, to enjoin

96 such charitable organization or professional fund-
 97 raising counsel or professional solicitor or other person
 98 from continuing such violation, solicitation or collection,
 99 or from engaging therein or from doing any acts in
 100 furtherance thereof and for such other relief as the court
 101 deems appropriate.

102 (g) In addition to the foregoing, any charitable
 103 organization, professional fund-raising counsel or
 104 professional solicitor who wilfully and knowingly
 105 violates any provisions of this article by employing any
 106 device, scheme, artifice, false representation or promise
 107 with intent to defraud or obtain money or other property
 108 shall be guilty of a misdemeanor, and, upon conviction
 109 thereof, for a first offense, shall be fined not less than
 110 one hundred dollars nor more than five hundred dollars,
 111 or be confined in the county jail not more than six
 112 months, or be both fined and imprisoned; and for a
 113 second and any subsequent offense, shall be fined not
 114 less than five hundred dollars nor more than one
 115 thousand dollars, or confined in the county jail not more
 116 than one year, or be both fined and imprisoned.

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

121 If the court finds that the said contributions are
 122 readily returnable to the original contributors, it may
 123 order the money to be placed in the custody and control
 124 of a general receiver, appointed pursuant to the
 125 provisions of article six, chapter fifty-one of this code,
 126 who shall be responsible for its proper disbursement to
 127 such contributors.

128 If the court finds that: (1) It is impossible to obtain
 129 the names of over one half the persons who were
 130 solicited and in violation of this article, or (2) if the
 131 majority of individual contributions was of an amount
 132 less than five dollars, or (3) if the cost to the state of
 133 returning these contributions is equal to or more than
 134 the total sum to be refunded, the court shall order the
 135 money to be placed in the custody and control of a

Enr. Com. Sub. for H. B. 1738] 18

136 general receiver appointed pursuant to the provisions of
137 article six, chapter fifty-one of this code. The general
138 receiver shall maintain this money pursuant to the
139 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.

Bruce O. Williams
Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Isidore C. Stubs
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Don Tuckman
President of the Senate

Joseph P. Allright
Speaker of the House of Delegates

The within Approved this the 26th
March
day of _____, 1986.

Arthur A. Maury, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/20/86

Time 2:58 p.m.

RECEIVED

1986 MAR 20 PM 6 57

SECRETARY OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86