WEST VIRGINIA LEGISLATURE
SECOND EXTRAORDINARY SESSION, 1990

ENROLLED

SENATE BILL NO. 14

(By Senators Bendette, Mr. President, and Sarver)

PASSED June 26, 1990

In Effect from Passage
AN ACT to amend and reenact sections three, six, seven, eight, nine, thirteen and fifteen, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the repeal of administrative adjudications under the charitable solicitation act and the establishment of circuit court actions in lieu thereof; allowing secretary of state to seek injunctive reliefs, clarifying exemption status of political party executive committees; and clarifying the notice on solicitation materials.

Be it enacted by the Legislature of West Virginia:

That sections three, six, seven, eight, nine, 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 to read as follows:

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-3. Commission on charitable organizations; powers 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 commis-
sioner 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.

(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 investigations as provided in 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; and

(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, 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.

§29-19-6. 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 associations, 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 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. 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; and

(6) Political party executive committees that are conducting raffles.

(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: *Provided*, That
such organizations may solicit and receive contributions from the public in excess of ten thousand dollars during a calendar year and still be exempt from filing an annual registration statement;

(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; and

(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.

(c) Every printed solicitation shall include the following statement: "West Virginia residents may obtain a summary of the registration and financial documents from the secretary of state, state capitol, Charleston, West Virginia 25305. Registration does not imply endorsement."


(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.

(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 service provided to the public in connection with the soliciting of contributions.


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.

§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 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 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 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 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 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.


(a) No charitable organization, professional fund-raising counsel or professional solicitor subject to the provisions of this article may use or exploit the fact of registration so as to lead the public to believe that such registration in any manner constitutes an endorsement or approval by the state.

(b) No person may, in connection with the solicitation of contributions for or the sale of goods or services of a person other than a charitable organization, misrepresent to or mislead anyone by any manner, means, practice or device whatsoever, to believe that the person on whose behalf such solicitation or sale is being conducted is a charitable organization or that the proceeds of such solicitation or sale will be used for charitable purposes, if such is not the fact.

(c) No person may in connection with the solicitation of contributions or the sale of goods or services for charitable purposes represent to or lead anyone by any manner, means, practice or device whatsoever, to believe that any other person sponsors or endorses such solicitation of contributions, sale of goods or services for charitable purposes or approves of such charitable purposes of a charitable organization connected therewith when such other person has not given consent to the use of his 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.

(d) 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.

(e) 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.


(a) 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 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.

(b) In addition to the foregoing, any person who willfully and knowingly violates any provision 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.

(c) Whenever the secretary of state, attorney general
or any prosecuting attorney has reason to believe that
any charitable organization, professional fund-raising
counsel or professional solicitor is operating in viola-
tion of the provisions of this article, the secretary of
state, attorney general or prosecuting attorney may
bring an action in the name of the state against such
charitable organization and its officers, such profes-
sional fund-raising counsel or professional solicitor or
any other person who has violated this article in the
circuit court of the county wherein the cause of action
arises to enjoin such charitable organization or profes-
sional fund-raising counsel or professional solicitor or
other person from continuing such violation, solicita-
tion or collection, or from engaging therein or from
doing any acts in furtherance thereof and for such
other relief as the court deems appropriate.

(d) 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 prom-
ise 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 impris-
oned; 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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the __________ day of ______________, 1990.

Governor