

WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 1990

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ENROLLED

SENATE BILL NO. 14

(By Senators *Burdette, Mr. President, and Sarmon*)
(*By Request of the Executive*)

—●—
PASSED June 26 1990

In Effect from Passage

ENROLLED

Senate Bill No. 14

(BY SENATORS BURDETTE, MR. PRESIDENT, AND HARMAN)

(BY REQUEST OF THE EXECUTIVE)

[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,
- 2 herein referred to as the "commission", consists of
- 3 seven members, including the secretary of state or his

4 or her designate, who shall be the chairman, the
5 attorney general or his or her designate, the commis-
6 sioner of human services or his or her designate, the
7 director of the state department of health or his or her
8 designate, and three members to be appointed by the
9 governor who shall serve at his will and pleasure.

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

13 (1) To hold investigations as provided in section
14 fifteen of this article;

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

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

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

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

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

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

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

10 which are directly responsible to any such educational
11 institutions;

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

17 (3) Hospitals which are nonprofit and charitable;

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

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

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

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

48 (1) Local youth athletic organizations: *Provided*, That

49 such organizations may solicit and receive contribu-
50 tions from the public in excess of ten thousand dollars
51 during a calendar year and still be exempt from filing
52 an annual registration statement;

53 (2) Community civic clubs;

54 (3) Community service clubs;

55 (4) Fraternal organizations;

56 (5) Labor unions;

57 (6) Local posts, camps, chapters or similarly desig-
58 nated elements or county units of such elements of
59 bona fide veterans organizations or auxiliaries which
60 issue charters to such local elements throughout the
61 state;

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

64 (8) Bona fide ambulance associations or auxiliaries;
65 and

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

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

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

§29-19-7. Filing of solicitation contracts.

1 (a) Every written contract or agreement between
2 professional fund-raising counsel and a charitable
3 organization shall be filed with the secretary of state
4 within ten days after such contract or agreement is
5 concluded.

6 (b) Every written contract or agreement between a
7 professional solicitor and a charitable organization
8 shall be filed with the secretary of state within ten
9 days after such agreement is concluded. In the absence
10 of a written contract or agreement between a profes-
11 sional solicitor and a charitable organization, a written
12 statement of the nature of the arrangement to prevail
13 in lieu thereof shall be filed.

14 (c) Each statement must clearly provide the amount,
15 percentage or other method of compensation to be
16 received by the professional solicitor or professional
17 fund-raising counsel as a result of the contract or
18 arrangement.

19 (d) For purposes of this section, the total moneys,
20 funds, pledges or other property raised or received
21 shall not include the actual cost to the charitable
22 organization or professional solicitor of goods sold or
23 service provided to the public in connection with the
24 soliciting of contributions.

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

1 No charitable organizations subject to this article
2 may solicit funds from the public except for charitable
3 purposes or expend funds raised for charitable pur-
4 poses 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)
10 the purpose of the solicitation, (4) upon request of the
11 person solicited, the estimated percentage of the
12 money collected which will be applied to the cost of
13 solicitation and administration or how much of the
14 money collected will be applied directly for the
15 charitable purpose, and (5) the number of the raffle,
16 bingo or other such state 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
35 contracts and agreements and assurance of fund-
36 raising activities without excessive pressure.

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

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

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

1 (a) No person may act as a professional fund-raising
2 counsel or professional solicitor for a charitable
3 organization subject to the provisions of this article,
4 unless he or she has first registered with the secretary
5 of state. Applications for such registration shall be in
6 writing under oath or affirmation in the form pres-
7 cribed by the secretary of state and contain such

8 information as he or she may require. The application
9 for registration by professional fund-raising counsel or
10 professional solicitor shall be accompanied by an
11 annual fee in the sum of fifty dollars. A partnership or
12 corporation, which is a professional fund-raising
13 counsel or professional solicitor, may register for and
14 pay a single fee on behalf of all its members, officers,
15 agents and employees. However, the names and
16 addresses of all officers, agents and employees of
17 professional fund-raising counsel and all professional
18 solicitors, their officers, agents, servants or employees
19 employed to work under the direction of a professional
20 solicitor shall be listed in the application.

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

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

43 (d) The secretary of state or his or her designate
44 shall examine each application, and if he or she finds
45 it to be in conformity with the requirements of this
46 article and all relevant rules and regulations and the
47 registrant has complied with the requirements of this
48 article and all relevant rules and regulations, he or she

49 shall approve the registration.

§29-19-13. Prohibited acts.

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

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

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

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

39 the charitable organization.

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

43 (1) Has obtained the written authorization of two
44 officers of such organization, a copy of which shall be
45 filed with the secretary of state. Such written autho-
46 rization shall bear the signature of the solicitor and
47 shall expressly state on its face the period for which it
48 is valid, which shall not exceed one year from the date
49 issued; and

50 (2) Carries such authorization on his or her person
51 when making solicitations and exhibits the same on
52 request to persons solicited or police officers or agents
53 of the secretary of state.

§29-19-15. Enforcement and penalties.

1 (a) The secretary of state, upon his or her own
2 motion, upon request of the commission, or upon
3 complaint of any person, may, if he or she finds
4 reasonable ground to suspect a violation, investigate
5 any charitable organization, professional fund-raising
6 counsel or professional solicitor to determine whether
7 such charitable organization, professional fund-raising
8 counsel or professional solicitor has violated the
9 provisions of this article or has filed any application or
10 other information required under this article which
11 contains false or misleading statements.

12 (b) In addition to the foregoing, any person who
13 willfully and knowingly violates any provision of this
14 article, or who shall willfully and knowingly give false
15 or incorrect information to the secretary of state in
16 filing statements or reports required by this article,
17 whether such report or statement is verified or not,
18 shall be guilty of a misdemeanor, and, upon conviction
19 thereof, shall be fined upon first conviction thereof in
20 an amount not less than one hundred dollars nor more
21 than five hundred dollars, or be imprisoned in the
22 county jail for not more than six months, or be both
23 fined and imprisoned, and for the second and any

24 subsequent offense to pay a fine of not less than five
25 hundred dollars nor more than one thousand dollars,
26 or be imprisoned for not more than one year, or be
27 both fined and imprisoned.

28 (c) Whenever the secretary of state, attorney general
29 or any prosecuting attorney has reason to believe that
30 any charitable organization, professional fund-raising
31 counsel or professional solicitor is operating in viola-
32 tion of the provisions of this article, the secretary of
33 state, attorney general or prosecuting attorney may
34 bring an action in the name of the state against such
35 charitable organization and its officers, such profes-
36 sional fund-raising counsel or professional solicitor or
37 any other person who has violated this article in the
38 circuit court of the county wherein the cause of action
39 arises to enjoin such charitable organization or profes-
40 sional fund-raising counsel or professional solicitor or
41 other person from continuing such violation, sollicita-
42 tion or collection, or from engaging therein or from
43 doing any acts in furtherance thereof and for such
44 other relief as the court deems appropriate.

45 (d) In addition to the foregoing, any charitable
46 organization, professional fund-raising counsel or
47 professional solicitor who willfully and knowingly
48 violates any provisions of this article by employing any
49 device, scheme, artifice, false representation or prom-
50 ise with intent to defraud or obtain money or other
51 property shall be guilty of a misdemeanor, and, upon
52 conviction thereof, for a first offense, shall be fined not
53 less than one hundred dollars nor more than five
54 hundred dollars, or be confined in the county jail not
55 more than six months, or be both fined and impris-
56 oned; and for a second and any subsequent offense,
57 shall be fined not less than five hundred dollars nor
58 more than one thousand dollars, or confined in the
59 county jail not more than one year, or be both fined
60 and imprisoned.

61 At any proceeding under this section, the court shall
62 also determine whether it is possible to return to the
63 contributors the contributions which were thereby
64 obtained.

65 If the court finds that the said contributions are
66 readily returnable to the original contributors, it may
67 order the money to be placed in the custody and
68 control of a general receiver, appointed pursuant to
69 the provisions of article six, chapter fifty-one of this
70 code, who shall be responsible for its proper disburse-
71 ment to such contributors.

72 If the court finds that: (1) It is impossible to obtain
73 the names of over one half the persons who were
74 solicited and in violation of this article, or (2) if the
75 majority of individual contributions was of an amount
76 less than five dollars, or (3) if the cost to the state of
77 returning these contributions is equal to or more than
78 the total sum to be refunded, the court shall order the
79 money to be placed in the custody and control of a
80 general receiver appointed pursuant to the provisions
81 of article six, chapter fifty-one of this code. The
82 general receiver shall maintain this money pursuant
83 to the provisions of article eight, chapter thirty-six of
84 this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederic L. Rose
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Harold E. Helms
.....
Clerk of the Senate

Donald L. Gapp
.....
Clerk of the House of Delegates

Paul M. Smith
.....
President of the Senate

Robert C. ...
.....
Speaker House of Delegates

The within is approved this the *11th*

day of *July*, 1990.

Moston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 6/28/40

Time 11:36 am

RECEIVED

1990 JUL 11 AM 11:00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE