

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992

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# ENROLLED

SENATE BILL NO. 17

(By Senator Sullivan)

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PASSED March 6, 1992

In Effect 90 days from Passage

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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## **ENROLLED**

### **Senate Bill No. 17**

(BY SENATOR HOLLIDAY)

[Passed March 6, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, three, five, six, seven, eight, eleven, twelve and thirteen, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto two new sections, designated sections fifteen-a and fifteen-b; and to amend chapter forty-six-a of said code by adding thereto a new article, designated article six-d, all relating to the solicitation by profit business entities and nonprofit charitable organizations generally; revising provisions governing the solicitation of charitable funds; redefining the term charitable organization; changing the membership requirements of the commission; requiring charitable organizations to file final reports to reflect activities not shown in their last report before withdrawing from the state; removing the requirement that the percentage of funds remaining in the state be included in the registration application; changing the financial disclosure requirements in applications; requiring the filing of support documentation provided to the charitable organization by its fund-raising contractor; redefining the exemption for churches; limiting the exemption for youth athletic organizations; revising disclosure requirements; removing and restat-

ing the notice on printed solicitations requirement; requiring the filing of final settlement reports on contracts between charitable organizations and fund raising contractors; removing the percentage of solicitations requirement at the point of solicitation; clarifying the definition of reasonable donor expectation; defining independent governing boards and conflicts of interest for those boards; deleting the reciprocal law provision; defining prohibited solicitations; removing the requirement that solicitors carry authorizations; providing for private and class actions for violations of this article; providing for civil penalties for intentional violations of the article; creating a special revenue fund for the deposit of proceeds of penalties and other funds; creating the "Prizes and Gifts Act"; requiring that prizes, gifts or items of value be delivered to a consumer within ten days of the representation, without obligation; requiring disclosure of the sponsor and eligibility conditions; mandating the disclosure of costs and expenses; prohibiting certain methods of notification; and establishing a penalty for fraudulent acts or practices.

*Be it enacted by the Legislature of West Virginia:*

That sections two, three, five, six, seven, eight, eleven, twelve and thirteen, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections fifteen-a and fifteen-b; and that chapter forty-six-a of said code be amended by adding thereto a new article, designated article six-a, all to read as follows:

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS**

### **ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.**

#### **§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 eleemos-  
5 nary organization, or any person who solicits or  
6 obtains contributions solicited from the public for  
7 charitable purposes, or any person who in any manner  
8 employs any appeal for contributions which may be  
9 reasonably interpreted to suggest that any part of such  
10 contributions will be used for charitable purposes. A  
11 chapter, branch, area, office or similar affiliate or any  
12 person soliciting contributions within the state for a  
13 charitable organization which has its principal place of  
14 business outside the state is a charitable organization  
15 for the purposes of this article.

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

18 (3) "Solicit" and "solicitation" means the request or  
19 appeal, directly or indirectly, for any contribution on  
20 the plea or representation that such contribution will  
21 be used for a charitable purpose, including, without  
22 limitation, the following methods of requesting such  
23 contribution:

24 (a) Any oral or written request;

25 (b) Any announcement to the press, over the radio  
26 or television, or by telephone or telegraph, concerning  
27 an appeal or campaign to which the public is  
28 requested to make a contribution for any charitable  
29 purpose connected therewith;

30 (c) The distribution, circulation, posting or publish-  
31 ing of any handbill, written advertisement or other  
32 publication which directly or by implication seeks to  
33 obtain public support; or

34 (d) The sale of, offer or attempt to sell, any adver-  
35 tisement, advertising space, subscription, ticket or any  
36 service or tangible item in connection with which any  
37 appeal is made for any charitable purpose or where  
38 the name of any charitable or civic organization is  
39 used or referred to in any such appeal as an induce-  
40 ment or reason for making any such sale, or when or  
41 where in connection with any such sale, any statement  
42 is made that the whole or any part of the proceeds

43 from any such sale will be donated to any charitable  
44 purpose.

45 "Solicitation" as defined herein, shall be deemed to  
46 occur when the request is made, at the place the  
47 request is received, whether or not the person making  
48 the same actually receives any contribution.

49 (4) "Federated fund-raising organization" means a  
50 federation of independent charitable organizations  
51 which have voluntarily joined together, including, but  
52 not limited to, a united fund or community chest, for  
53 purposes of raising and distributing money for and  
54 among themselves and where membership does not  
55 confer operating authority and control of the individ-  
56 ual agencies upon the federated group organization.

57 (5) "Parent organization" is that part of a charitable  
58 organization which coordinates, supervises or exercises  
59 control over policy, fund raising and expenditures, or  
60 assists, receives funds from or advises one or more  
61 chapters, branches or affiliates in the state.

62 (6) "Person" means any individual, organization,  
63 trust, foundation, group, association, partnership,  
64 corporation, society or any combination of them.

65 (7) "Professional fund-raising counsel" means any  
66 person who for a flat fixed fee under a written  
67 agreement plans, conducts, manages, carries on,  
68 advises or acts as a consultant, whether directly or  
69 indirectly, in connection with soliciting contributions  
70 for, or on behalf of any charitable organization but  
71 who actually solicits no contributions as a part of such  
72 services. A bona fide salaried officer or employee of a  
73 charitable organization maintaining a permanent  
74 establishment within the state shall not be deemed to  
75 be a professional fund-raising counsel.

76 (8) "Professional solicitor" means any person who,  
77 for a financial or other consideration, solicits contribu-  
78 tions for, or on behalf of a charitable organization,  
79 whether such solicitation is performed personally or  
80 through said person's agents, servants or employees  
81 specially employed by, or for a charitable organization,

82 who are engaged in the solicitation of contributions  
83 under the direction of such person, or a person who  
84 plans, conducts, manages, carries on, advises or acts as  
85 a consultant to a charitable organization in connection  
86 with the solicitation of contributions but does not  
87 qualify as “professional fund-raising counsel” within  
88 the meaning of this article. A bona fide salaried officer  
89 or employee of a charitable organization maintaining a  
90 permanent establishment within the state is not a  
91 professional solicitor.

92 No attorney, investment counselor or banker, who  
93 advises any person to make a contribution to a char-  
94 itable organization, shall be considered, as the result of  
95 such advice, a professional fund-raising counsel or a  
96 professional solicitor.

97 (9) “Commission” means the commission on charita-  
98 ble 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  
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, two members  
6 from the staff of the department of health and human  
7 resources to be designated by the secretary of health  
8 and human resources and three members to be  
9 appointed by the governor who shall serve at his will  
10 and pleasure.

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

14 (1) To hold investigations as provided in section  
15 fifteen of this 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  
24 or pursuant to regulations promulgated by him.  
25 Minutes of each meeting shall be public records and  
26 filed with the secretary of state.

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

**§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  
4 solicited on its behalf shall, prior to any solicitation,  
5 file a registration statement with the secretary of state  
6 upon forms prescribed by him or her, which shall be  
7 good for one full year and which shall be refiled in the  
8 next and each following year in which such charitable  
9 organization is engaged in solicitation activities. If an  
10 organization discontinues solicitation at any time after  
11 its last registration filing, then it must file a registra-  
12 tion statement reflecting its activities during its last  
13 fiscal year in which solicitation in West Virginia took  
14 place. It shall be the duty of the president, chairman  
15 or principal officer of such charitable organization to  
16 file the statements required under this article. Such  
17 statements shall be sworn to and shall contain the  
18 following information:

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

21 (2) The principal address of the organization and the  
22 address of any offices in this state. If the organization  
23 does not maintain an office, the name and address of  
24 the person having custody of its financial records;

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

27 (4) The place where and the date when the organi-  
28 zation was legally established, the form of its  
29 organization;

30 (5) The names and addresses of the officers, direc-  
31 tors, trustees and the principal salaried executive staff  
32 officer;

33 (6) A copy of a balance sheet and a statement or  
34 report of income and expenses for the organization's  
35 immediately preceding fiscal year, or a financial  
36 statement reporting information showing the kind and  
37 amount of funds raised during the preceding fiscal  
38 year, the costs and expenses incidental thereto and  
39 showing how the funds were disbursed or allocated for  
40 the same fiscal year: *Provided*, That for organizations  
41 raising more than fifty thousand dollars per year in  
42 contributions, the balance sheet and income and  
43 expense statement, or financial statement provided,  
44 shall be audited by an independent public accountant.  
45 Organizations are required to report the amount of  
46 money raised in the state and the amount spent in the  
47 state for charitable purposes;

48 (7) A copy of any determination of the organization's  
49 tax exempt status under the provisions of 26 U.S.C.  
50 §501 (c)(3) and a copy of the last filed Internal Revenue  
51 Service form 990 and Schedule A for every charitable  
52 organization and any parent organization;

53 (8) Whether the organization intends to solicit  
54 contributions from the public directly or have such  
55 done on its behalf by others;

56 (9) Whether the organization is authorized by any  
57 other governmental authority to solicit contributions  
58 and whether it is or has ever been enjoined by any  
59 court from soliciting contributions;

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

62 (11) The name or names under which it intends to  
63 solicit contributions;

64 (12) The names of the individuals or officers of the



65 organization who will have final responsibility for the  
66 custody of the contributions;

67 (13) The names of the individuals or officers of the  
68 organization responsible for the final distribution of  
69 the contributions; and

70 (14) Copies of all contract documentation from  
71 professional fund-raising counsels and professional  
72 solicitors as provided for in subsection (d), section  
73 seven of this article.

74 (b) Each chapter, branch or affiliate, except an  
75 independent member agency of a federated fund-  
76 raising organization, may separately report the infor-  
77 mation required by this subsection, or report the  
78 information to its parent organization which shall then  
79 furnish such information as to its West Virginia  
80 affiliates, chapters and branches in a consolidated form  
81 to the secretary of state. An independent member  
82 agency of a federated fund-raising organization, as  
83 hereinbefore defined, shall comply with the provisions  
84 of this article independently. Each organization shall  
85 file a separate registration form for each name under  
86 which funds will be solicited.

87 (c) The registration forms and any other documents  
88 prescribed by the secretary of state shall be signed by  
89 an authorized officer or by an independent public  
90 accountant and by the chief fiscal officer of the  
91 charitable organization and shall be verified under  
92 oath.

93 (d) Every charitable organization collecting less than  
94 one million dollars during any year which submits an  
95 independent registration to the secretary of state shall  
96 pay an annual registration fee of fifteen dollars; every  
97 charitable organization collecting more than one  
98 million dollars during one year which submits an  
99 independent registration to the secretary of state shall  
100 pay an annual registration fee of fifty dollars; a parent  
101 organization filing on behalf of one or more chapters,  
102 branches or affiliates or a single organization filing  
103 under different names shall pay a single annual  
104 registration fee of fifty dollars for itself and such

105 chapters, branches or affiliates included in the regis-  
106 tration statement.

**§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) Churches, synagogues, associations or conven-  
33 tions of churches, religious orders or religious organ-  
34 izations that are an integral part of a church which  
35 qualifies as tax exempt under the provisions of 26

36 U.S.C. §501(c)(3) as the same is in effect on the  
37 effective date of this section;

38 (6) Any person, firm, corporation or organization  
39 that sponsors a single fund raising event for the  
40 benefit of a named charitable organization where all  
41 or part of the funds collected are donated to the  
42 named charitable organization: *Provided*, That the  
43 named charitable organization receiving the funds is  
44 registered pursuant to this article, reports each of  
45 these donations individually, and certifies that no  
46 funds were withheld by the organization that solicited  
47 the funds.

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

55 (1) Local youth athletic organizations;

56 (2) Community civic clubs;

57 (3) Community service clubs;

58 (4) Fraternal organizations;

59 (5) Labor unions;

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

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

67 (8) Bona fide ambulance associations or auxiliaries;

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

69 Charitable organizations which do not intend to  
70 solicit and receive in excess of ten thousand dollars,  
71 but do receive in excess of that amount from the

72 public, shall file the annual registration statement  
73 within thirty days after contributions are in excess of  
74 ten thousand dollars.

**§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 by the professional fund-  
4 raising counsel with the secretary of state within ten  
5 days after said parties have entered into such contract  
6 or agreement.

7 (b) Every written contract or agreement between a  
8 professional solicitor and a charitable organization  
9 shall be filed by the professional solicitor with the  
10 secretary of state within ten days after said parties  
11 have entered into such agreement or contract. In the  
12 absence of a written contract or agreement between a  
13 professional solicitor and a charitable organization, a  
14 written statement of the nature of the arrangement to  
15 prevail in lieu thereof shall be filed.

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

21 (d) Each charitable organization, as part of its  
22 registration as required in section five of this article,  
23 shall file with the secretary of state copies of all  
24 documents reflecting the final settlement amounts for  
25 a solicitation contract or, in the case of multiple year  
26 contracts, documents reflecting the total amount of  
27 money, funds or other property raised and expenses  
28 incurred by the professional fund-raising counsel or  
29 professional solicitor in a fiscal year.

30 (e) For purposes of this section, the total moneys,  
31 funds, pledges or other property raised or received  
32 shall not include the actual cost to the charitable  
33 organization or professional solicitor of goods sold or  
34 service provided to the public in connection with the  
35 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 not stated in its solicitation materials.

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 Every printed solicitation shall include the following  
18 statement "West Virginia residents may obtain a  
19 summary of the registration and financial documents  
20 from the Secretary of State, State Capitol, Charleston,  
21 West Virginia 25305. Registration does not imply  
22 endorsement."

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

28 Organizations applying for registration shall be  
29 reviewed according to the following standards:

30 (a) Charitable organizations shall include in each  
31 solicitation a clear description of programs for which  
32 funds are requested and source from which written  
33 information is available pursuant to section thirteen of  
34 this article. Expenditures shall be related in a primary  
35 degree to stated purpose (programs and activities)  
36 described in solicitations and in accordance with  
37 reasonable donor expectations. For purposes of this  
38 section, reasonable donor expectation requires that a

39 charitable organization shall not expend funds in ways  
40 that are not apparent to a donor from the text of the  
41 presentation as being obvious or potential uses for his  
42 contribution. The reasonable donor expectation stan-  
43 dard shall apply to all expenditures made by the  
44 charitable organization when compared to the solicita-  
45 tion materials used.

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

51 (c) Each charitable organization shall establish an  
52 independent governing board which shall oversee the  
53 expenditures, policies, programs and purposes of the  
54 charity's activities. The independent governing board  
55 shall not delegate its oversight control or authority to  
56 any other person(s) or organization.

57 (d) Members of the independent governing board  
58 and officers of the organization shall avoid transactions  
59 involving conflict of interest on their part. A charita-  
60 ble organization may enter into transactions involving  
61 parties related by blood, marriage or business associa-  
62 tion only if: (1) Where a majority of the independent  
63 governing board has survived disqualification over  
64 conflicts of interest to approve the action; and (2)  
65 where the related parties or potential conflict is fully  
66 disclosed in the application for registration; and (3)  
67 where the transaction is fair and reasonable for the  
68 organization.

69 (e) No charitable organization, professional fund-  
70 raiser or other person soliciting contributions for or on  
71 behalf of a charitable organization may use a name,  
72 symbol or statement so closely related or similar to  
73 that used by another charitable organization or gov-  
74 ernmental agency that the use thereof would tend to  
75 confuse or mislead the public.

**§29-19-11. Records to be kept by charitable organizations, professional fund-raising counsel and professional solicitors.**

1 Every charitable organization, professional fund-  
2 raising counsel and professional solicitor subject to the  
3 provisions of this article shall, in accordance with the  
4 rules prescribed by the secretary of state, keep true  
5 fiscal records as to its activities in this state as may be  
6 covered by this article in such form as will enable it  
7 accurately to provide the information required by this  
8 article. Upon demand, such records shall be made  
9 available to the secretary of state, the commission or  
10 the attorney general for inspection. Such records shall  
11 be retained for a period of at least three years after  
12 the end of the period of registration to which they  
13 relate.

**§29-19-12. Reciprocal agreements.**

1 The secretary of state may enter into reciprocal  
2 agreements with the appropriate authority of any  
3 other state for the purpose of exchanging information  
4 with respect to charitable organizations, professional  
5 fund-raising counsel and professional solicitors. Pursu-  
6 ant to such agreements the secretary of state may  
7 accept information filed by a charitable organization,  
8 professional fund-raising counsel or professional  
9 solicitor with the appropriate authority of another  
10 state in lieu of the information required to be filed in  
11 accordance with the provisions of this article, if such  
12 information is substantially similar to the information  
13 required under this article.

**§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 solicita-  
17 tion of contributions for charitable purposes, misrepre-  
18 sent, mislead, or omit information concerning how the  
19 proceeds will be used. Proceeds gathered from any  
20 given solicitation must be used for the charitable  
21 purposes represented in the materials sent or the  
22 presentation given by the solicitor. Violations of this  
23 section will be considered to be both a violation of the  
24 reasonable donor expectation standard of section eight  
25 and may be subject to prosecution for fraud pursuant  
26 to section fifteen of this article.

27 (d) No person may in connection with the solicita-  
28 tion of contributions or the sale of goods or services for  
29 charitable purposes represent to or lead anyone by any  
30 manner, means, practice or device whatsoever, to  
31 believe that any other person sponsors or endorses  
32 such solicitation of contributions, sale of goods or  
33 services for charitable purposes or approves of such  
34 charitable purposes of a charitable organization con-  
35 nected therewith when such other person has not  
36 given consent to the use of his or her name for these  
37 purposes: *Provided*, That any member of the board of  
38 directors or trustees of a charitable organization or  
39 any other person who has agreed either to serve or to  
40 participate in any voluntary capacity in the campaign  
41 shall be deemed thereby to have given his or her  
42 consent to the use of his or her name in said campaign.

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



50 the charitable organization.

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

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

**§29-19-15a. Private actions and class actions.**

1 (a) Any person who suffers injury or damages as a  
2 result of acts or practices in violation of the provisions  
3 of this article may bring a civil action against the  
4 charitable organization, professional fund-raiser, or  
5 professional solicitor engaged in such act or practices.  
6 The person may recover such damages sustained as a  
7 result of such acts and practices, costs incurred, and  
8 reasonable attorneys' fees. Punitive damages may be  
9 awarded in cases of intentional violations of this  
10 article.

11 (b) The attorney general, or secretary of state, in a  
12 representative capacity on behalf of any person  
13 entitled to bring an action under this article, or any  
14 person entitled to bring an action under this article,  
15 may institute a class action, pursuant to the applicable  
16 rules of civil procedure governing class actions, for the  
17 recovery of damages.

**§29-19-15b. Civil penalty for intentional violations.**

1 In any action brought pursuant to the provisions of  
2 this article, if the court finds that intentional violations  
3 have occurred, the state, upon petition to the court  
4 and in addition to any damages awarded any party or  
5 parties, may recover attorney fees and a civil penalty  
6 not exceeding three times the amount collected in  
7 such civil action. Any funds recovered as provided for  
8 in this section and any other funds recovered by the  
9 state as the result of an award for damages, penalties

10 or settlements in enforcing this article, shall be paid  
 11 into the state treasury to the credit of a special  
 12 revenue fund to be known as the “charitable organi-  
 13 zation” fund which is hereby created. The moneys so  
 14 credited to such fund may be used solely for the  
 15 purposes of administering and enforcing the provisions  
 16 of this article.

**CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT  
 AND PROTECTION ACT.**

**ARTICLE 6D. PRIZES AND GIFTS.**

**§46A-6D-1. Short title.**

1 This act may be cited as the “Prizes and Gifts Act”.

**§46A-6D-2. Definitions.**

1 As used in this article:

2 (a) “Anything of value”, “item of value” or “item”  
 3 means any item or service with monetary value.

4 (b) “Handling charge” means any charge, fee or sum  
 5 of money which is paid by a consumer to receive a  
 6 prize, gift or any item of value, including, but not  
 7 limited to, promotional fees, redemption fees, registra-  
 8 tion fees or delivery costs.

9 (c) “Person” means any natural person, corporation,  
 10 trust, partnership, association and any other legal  
 11 entity.

**§46A-6D-3. Representation of having won a prize, gift or  
 any item of value.**

1 (a) Unless otherwise provided by article six of this  
 2 chapter a person may not, in connection with the sale  
 3 or lease or solicitation for the sale or lease of goods,  
 4 property or service, represent that another person has  
 5 won anything of value or is the winner of a contest,  
 6 unless all of the following conditions are met:

7 (1) The recipient of the prize, gift or item of value  
 8 is given the prize, gift or item of value without  
 9 obligation; and

10 (2) The prize, gift or item of value is delivered to the

11 recipient at no expense to him or her, within ten days  
12 of the representation.

13 (b) The use of language that may lead a reasonable  
14 person to believe he or she has won a contest or  
15 anything of value, including, but not limited to,  
16 "Congratulations", or "You have won", or "You are  
17 the winner of", is a representation of the type gov-  
18 erned by this section.

**§46A-6D-4. Representation of eligibility to win or to receive  
a prize, gift or item of value.**

1 (a) A person may not represent that another person  
2 is eligible or has a chance to win or to receive a prize,  
3 gift or item of value without clearly and conspicuously  
4 disclosing on whose behalf the contest or promotion is  
5 conducted, as well as all material conditions which a  
6 participant must satisfy. In an oral solicitation all  
7 material conditions shall be disclosed prior to request-  
8 ing the consumer to enter into the sale or lease.  
9 Additionally, in any written material covered by this  
10 section, each of the following shall be clearly and  
11 prominently disclosed:

12 (1) Immediately adjacent to the first identification of  
13 the prize, gift or item of value to which it relates; or

14 (2) In a separate section entitled "Consumer Disclo-  
15 sure" which title shall be printed in no less than ten-  
16 point bold-face type and which section shall contain  
17 only a description of the prize, gift or item of value  
18 and the disclosures outlined in paragraphs (i), (ii) and  
19 (iii) of this subdivision:

20 (i) The true retail value of each item or prize;

21 (ii) The actual number of each item, gift or prize to  
22 be awarded; and

23 (iii) The odds of receiving each item, gift or prize.

24 (b) All disclosures required by this article to be in  
25 writing shall comply with the following:

26 (1) All dollar values shall be stated in arabic numer-  
27 als and be preceded by a dollar sign (\$); and

28 (2) The number of each item, gift or prize to be  
29 awarded and the odds of receiving each item, gift or  
30 prize shall be stated in arabic numerals and shall be  
31 written in a manner which is clear and understandable.

32 (c) It is unlawful to notify a person that upon  
33 acceptance or response he or she will receive a gift,  
34 prize or item of value in connection with a promotion  
35 or otherwise that has as a condition of receiving the  
36 gift, prize or item of value the requirement that he or  
37 she pay any money, or purchase, lease or rent any  
38 goods or services, unless there has been clearly and  
39 conspicuously disclosed the nature of the charges to be  
40 incurred, including, but not limited to, any shipping  
41 charge and handling charges. Such disclosure shall be  
42 given:

43 (1) On the face of any written materials; or

44 (2) Prior to requesting or inviting the person to  
45 enter into the sale or lease in any oral notification.

46 (d) The provisions of this section do not apply where  
47 to be eligible:

48 (1) Participants are asked only to complete and mail,  
49 or deposit at a local retail commercial establishment,  
50 an entry blank obtainable locally or by mail, or to call  
51 in their entry toll free by telephone or other free or  
52 local calling option; or

53 (2) Participants are never required to listen to a  
54 sales presentation and never requested or required to  
55 pay any sum of money for any merchandise, service or  
56 item of value.

57 (e) Nothing in this section creates any liability for  
58 acts by the publisher, owner, agent or employee of a  
59 newspaper, periodical, radio station, telecommunica-  
60 tions company, television station, cable-television  
61 system or other advertising medium arising out of the  
62 publication or dissemination of any advertisement or  
63 promotion governed by this section, when the pub-  
64 lisher, owner, agent or employee did not know that  
65 the advertisement or promotion violated the require-  
66 ments of this section.

**§46A-6D-5. Representation of being specially selected.**

1 (a) A person may not represent that another person  
2 has been specially selected in connection with the sale  
3 or lease or solicitation for sale or lease of goods,  
4 property or service, unless the selection process is  
5 designed to reach a particular type or types of persons.

6 (b) The use of any language that may lead a reason-  
7 able person to believe he has been specially selected,  
8 including, but not limited to, "Carefully Selected", or  
9 "You have been selected to receive", or "You have  
10 been chosen", is a representation of the type governed  
11 by this section.

**§46A-6D-6. Simulation of checks and invoices.**

1 In connection with a consumer transaction, no  
2 person may issue any writing which simulates or  
3 resembles:

4 (a) A check unless the writing clearly and conspic-  
5 uously disclosed its true value and purpose, and the  
6 writing would not mislead a reasonable person; or

7 (b) An invoice unless the intended recipient of the  
8 invoice has actually contracted for goods, property or  
9 services for which the issuer seeks proper payment.

**§46A-6D-7. Conditions for handling charges and shipping charges.**

1 (a) It is unlawful to notify a person that he or she  
2 may or will receive a gift, prize or item of value and  
3 that as a condition of receiving the gift, prize or item  
4 of value he or she will be required to pay any money,  
5 or purchase or lease, including rent, any goods or  
6 services, if any one or more of the following conditions  
7 exist:

8 (1) The shipping charges exceeds:

9 (i) The cost of postage or the charge of a shipping  
10 service in the business of delivering goods of like size,  
11 weight and kind for shipping the gift, prize or item of  
12 value from the geographic area in which the gift, prize  
13 or item of value is being distributed; or

14 (ii) The exact amount for shipping paid to an  
15 independent fulfillment house or an independent  
16 supplier, either of which is in the business of shipping  
17 goods for shippers other than the offeror of the gift,  
18 prize or item of value.

19 (2) The handling charge exceeds the lesser of five  
20 dollars or the actual cost of handling.

21 (b) This section applies to all offers of prizes, gifts or  
22 items of value covered by this article where such  
23 charges are permitted.

**§46A-6D-8. Action to enforce the provisions of article.**

1 Any consumer who suffers loss by reason of a  
2 violation of any provision of this article may bring a  
3 civil action to enforce such provisions. Any consumer  
4 who is successful in an action shall recover reasonable  
5 attorney's fees and court costs incurred by bringing  
6 the action.

**§46A-6D-9. Enforcement; penalties.**

1 Any violation of this article constitutes an unlawful  
2 act or practice under the provisions of article six of  
3 this chapter, regarding fraudulent acts or practices  
4 committed by a supplier in connection with a consu-  
5 mer transaction and shall be subject to the enforce-  
6 ment provisions of article seven of this chapter.

**§46A-6D-10. Exemptions.**

1 The provisions of sections four through seven of this  
2 article do not apply to the sale or purchase, or  
3 solicitation or representation in connection therewith,  
4 of goods from a catalog or of books, recordings,  
5 videocassettes, periodicals and similar goods through a  
6 membership group or club which is regulated by the  
7 federal trade commission trade regulation rule con-  
8 cerning use of negative option plans by sellers in  
9 commerce or through a contractual plan or arrange-  
10 ment such as a continuity plan, subscription arrange-  
11 ment or a single sale or purchase series arrangement  
12 under which the seller ships goods to a consumer who  
13 has consented in advance to receive such goods and

14 the recipient of such goods is given the opportunity,  
15 after examination of the goods, to receive a full refund  
16 of charges for the goods, or unused portion thereof,  
17 upon return of the goods, or unused portion thereof,  
18 undamaged.

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

*James Lee*  
.....  
Chairman Senate Committee

*Ernest Moore*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Darrell Robinson*  
.....  
Clerk of the Senate

*Donald G. Kopp*  
.....  
Clerk of the House of Delegates

*Kull Gaudette*  
.....  
President of the Senate

*John W. Bricker*  
.....  
Speaker House of Delegates

The within *is* approved this the *14* day of *April*, 1992.

*Yaston Caperton*  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/30/92

Time 9:40 am