WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1992

ENROLLED

SENATE BILL NO. 17

(By Senator Holliday)

PASSED March 6, 1992
In Effect 90 days from Passage

SECRETARY OF STATE
OFFICE OF WEST VIRGINIA
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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.


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,
philanthropic, humane, patriotic, religious or eleemosynary organization, or any person who solicits or obtains contributions solicited from the public for charitable purposes, or any person who in any manner employs any appeal for contributions which may be reasonably interpreted to suggest that any part of such contributions will be used for charitable purposes. A chapter, branch, area, office or similar affiliate or any person soliciting contributions within the state for a charitable organization which has its principal place of business outside the state is a charitable organization for the purposes of this article.

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

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

(a) Any oral or written request;

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

(c) The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication which directly or by implication seeks to obtain public support; or

(d) The sale of, offer or attempt to sell, any advertisement, advertising space, subscription, ticket or any service or tangible item in connection with which any appeal is made for any charitable purpose or where the name of any charitable or civic organization is used or referred to in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds
from any such sale will be donated to any charitable
purpose.

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

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

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

(6) “Person” means any individual, organization,
trust, foundation, group, association, partnership,
corporation, society or any combination of them.

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

(8) “Professional solicitor” means any person who,
for a financial or other consideration, solicits contribu-
tions for, or on behalf of a charitable organization,
whether such solicitation is performed personally or
through said person’s agents, servants or employees
specially employed by, or for a charitable organization,
who are engaged in the solicitation of contributions
under the direction of such person, or a person who
plans, conducts, manages, carries on, advises or acts as
a consultant to a charitable organization in connection
with the solicitation of contributions but does not
qualify as "professional fund-raising counsel" within
the meaning of this article. A bona fide salaried officer
or employee of a charitable organization maintaining a
permanent establishment within the state is not a
professional solicitor.

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

(9) “Commission” means the commission on charita-
ble organizations herein created.

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

(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, two members
from the staff of the department of health and human
resources to be designated by the secretary of health
and human resources 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;

(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 in furtherance of this article in accordance with the provisions of chapter twenty-nine-a of this code.

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

(a) Every charitable organization, except as provided in section six of this article, which intends to solicit contributions within this state or to have funds solicited on its behalf shall, prior to any solicitation, file a registration statement with the secretary of state upon forms prescribed by him or her, which shall be good for one full year and which shall be refiled in the next and each following year in which such charitable organization is engaged in solicitation activities. If an organization discontinues solicitation at any time after its last registration filing, then it must file a registration statement reflecting its activities during its last fiscal year in which solicitation in West Virginia took place. It shall be the duty of the president, chairman or principal officer of such charitable organization to file the statements required under this article. Such statements shall be sworn to and shall contain the following information:

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

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

(3) The names and addresses of any chapters, branches or affiliates in this state;
(4) The place where and the date when the organization was legally established, the form of its organization;

(5) The names and addresses of the officers, directors, trustees and the principal salaried executive staff officer;

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

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

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

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

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

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

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

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

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

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

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

(d) Every charitable organization collecting less than
one million dollars during any year which submits an
independent registration to the secretary of state shall
pay an annual registration fee of fifteen dollars; every
charitable organization collecting more than one
million dollars during one year which submits an
independent registration to the secretary of state shall
pay an annual registration fee of fifty dollars; a parent
organization filing on behalf of one or more chapters,
branches or affiliates or a single organization filing
under different names shall pay a single annual
registration fee of fifty dollars for itself and such
§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) Churches, synagogues, associations or conventions of churches, religious orders or religious organizations that are an integral part of a church which qualifies as tax exempt under the provisions of 26
U.S.C. §501(c)(3) as the same is in effect on the effective date of this section;

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

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

(1) Local youth athletic organizations;
(2) Community civic clubs;
(3) Community service clubs;
(4) Fraternal organizations;
(5) Labor unions;
(6) Local posts, camps, chapters or similarly designated elements or county units of such elements of bona fide veterans organizations or auxiliaries which issue charters to such local elements throughout the state;
(7) Bona fide organizations of volunteer firemen or auxiliaries;
(8) Bona fide ambulance associations or auxiliaries;
(9) Bona fide rescue squad associations or auxiliaries.

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


1 (a) Every written contract or agreement between professional fund-raising counsel and a charitable organization shall be filed by the professional fund-raising counsel with the secretary of state within ten days after said parties have entered into such contract or agreement.

(b) Every written contract or agreement between a professional solicitor and a charitable organization shall be filed by the professional solicitor with the secretary of state within ten days after said parties have entered into such agreement or contract. 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) Each charitable organization, as part of its registration as required in section five of this article, shall file with the secretary of state copies of all documents reflecting the final settlement amounts for a solicitation contract or, in the case of multiple year contracts, documents reflecting the total amount of money, funds or other property raised and expenses incurred by the professional fund-raising counsel or professional solicitor in a fiscal year.

(e) 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 not stated in its solicitation materials.

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.

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."

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 the following standards:

(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 pursuant to section thirteen of this article. Expenditures shall be related in a primary degree to stated purpose (programs and activities) described in solicitations and in accordance with reasonable donor expectations. For purposes of this section, reasonable donor expectation requires that a
charitable organization shall not expend funds in ways that are not apparent to a donor from the text of the presentation as being obvious or potential uses for his contribution. The reasonable donor expectation standard shall apply to all expenditures made by the charitable organization when compared to the solicitation materials used.

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

(d) Members of the independent governing board and officers of the organization shall avoid transactions involving conflict of interest on their part. A charitable organization may enter into transactions involving parties related by blood, marriage or business association only if: (1) Where a majority of the independent governing board has survived disqualification over conflicts of interest to approve the action; and (2) where the related parties or potential conflict is fully disclosed in the application for registration; and (3) where the transaction is fair and reasonable for the organization.

(e) No charitable organization, professional fundraiser 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.
§29-19-11. Records to be kept by charitable organizations, professional fund-raising counsel and professional solicitors.

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


1. The secretary of state may enter into reciprocal agreements with the appropriate authority of any other state for the purpose of exchanging information with respect to charitable organizations, professional fund-raising counsel and professional solicitors. Pursuant to such agreements the secretary of state may accept information filed by a charitable organization, professional fund-raising counsel or professional solicitor with the appropriate authority of another state in lieu of the information required to be filed in accordance with the provisions of this article, if such information is substantially similar to the information required under this article.


1. (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.

7. (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 for charitable purposes, misrepresent, mislead, or omit information concerning how the proceeds will be used. Proceeds gathered from any given solicitation must be used for the charitable purposes represented in the materials sent or the presentation given by the solicitor. Violations of this section will be considered to be both a violation of the reasonable donor expectation standard of section eight and may be subject to prosecution for fraud pursuant to section fifteen of this article.

(d) No person may in connection with the solicitation of contributions or the sale of goods or services for charitable purposes represent to or lead anyone by any manner, means, practice or device whatsoever, to believe that any other person sponsors or endorses such solicitation of contributions, sale of goods or services for charitable purposes or approves of such charitable purposes of a charitable organization connected 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.

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

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

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.


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

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


In any action brought pursuant to the provisions of this article, if the court finds that intentional violations have occurred, the state, upon petition to the court and in addition to any damages awarded any party or parties, may recover attorney fees and a civil penalty not exceeding three times the amount collected in such civil action. Any funds recovered as provided for in this section and any other funds recovered by the state as the result of an award for damages, penalties
or settlements in enforcing this article, shall be paid into the state treasury to the credit of a special revenue fund to be known as the “charitable organization” fund which is hereby created. The moneys so credited to such fund may be used solely for the purposes of administering and enforcing the provisions 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”.


1 As used in this article:

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

3 (b) “Handling charge” means any charge, fee or sum of money which is paid by a consumer to receive a prize, gift or any item of value, including, but not limited to, promotional fees, redemption fees, registration fees or delivery costs.

4 (c) “Person” means any natural person, corporation, trust, partnership, association and any other legal 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 chapter a person may not, in connection with the sale or lease or solicitation for the sale or lease of goods, property or service, represent that another person has won anything of value or is the winner of a contest, unless all of the following conditions are met:

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

3 (2) The prize, gift or item of value is delivered to the
recipient at no expense to him or her, within ten days of the representation.

(b) The use of language that may lead a reasonable person to believe he or she has won a contest or anything of value, including, but not limited to, “Congratulations”, or “You have won”, or “You are the winner of”, is a representation of the type governed by this section.

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

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

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

(2) In a separate section entitled “Consumer Disclosure” which title shall be printed in no less than ten-point bold-face type and which section shall contain only a description of the prize, gift or item of value and the disclosures outlined in paragraphs (i), (ii) and (iii) of this subdivision:

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

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

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

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

(1) All dollar values shall be stated in arabic numerals and be preceded by a dollar sign ($); and
(2) The number of each item, gift or prize to be awarded and the odds of receiving each item, gift or prize shall be stated in arabic numerals and shall be written in a manner which is clear and understandable.

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

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

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

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

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

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

(e) Nothing in this section creates any liability for acts by the publisher, owner, agent or employee of a newspaper, periodical, radio station, telecommunications company, television station, cable-television system or other advertising medium arising out of the publication or dissemination of any advertisement or promotion governed by this section, when the publisher, owner, agent or employee did not know that the advertisement or promotion violated the requirements of this section.
§46A-6D-5. Representation of being specially selected.

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

(b) The use of any language that may lead a reasonable person to believe he has been specially selected, including, but not limited to, “Carefully Selected”, or “You have been selected to receive”, or “You have been chosen”, is a representation of the type governed by this section.

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

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

(a) A check unless the writing clearly and conspicuously disclosed its true value and purpose, and the writing would not mislead a reasonable person; or

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

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

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

1. The shipping charges exceeds:

   (i) The cost of postage or the charge of a shipping service in the business of delivering goods of like size, weight and kind for shipping the gift, prize or item of value from the geographic area in which the gift, prize or item of value is being distributed; or
(ii) The exact amount for shipping paid to an independent fulfillment house or an independent supplier, either of which is in the business of shipping goods for shippers other than the offeror of the gift, prize or item of value.

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

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

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

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


Any violation of this article constitutes an unlawful act or practice under the provisions of article six of this chapter, regarding fraudulent acts or practices committed by a supplier in connection with a consumer transaction and shall be subject to the enforcement provisions of article seven of this chapter.

§46A-6D-10. Exemptions.

The provisions of sections four through seven of this article do not apply to the sale or purchase, or solicitation or representation in connection therewith, of goods from a catalog or of books, recordings, videocassettes, periodicals and similar goods through a membership group or club which is regulated by the federal trade commission trade regulation rule concerning use of negative option plans by sellers in commerce or through a contractual plan or arrangement such as a continuity plan, subscription arrangement or a single sale or purchase series arrangement under which the seller ships goods to a consumer who has consented in advance to receive such goods and
the recipient of such goods is given the opportunity, after examination of the goods, to receive a full refund of charges for the goods, or unused portion thereof, upon return of the goods, or unused portion thereof, undamaged.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James N. Schexnayder
Chairman Senate Committee

Ernest C. More
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell S. Hill
Clerk of the Senate

Donald D. Kapp
Clerk of the House of Delegates

Bill Bradshaw
President of the Senate

Robert C. Byrd
Speaker House of Delegates

The within bill has been passed by the Senate this the 10th day of April, 1992.

Mason Caperton
Governor