WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

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ENROLLED

HOUSE BILL No. 2279

(By Delegates...J. Martin, Love, Michael....)

Fragale, Osborne, Netlitt & Harrison

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Passed ........................................ March 10............................. 1995

In Effect ..................................... July 1, 1995 ...................... Passage
AN ACT to repeal sections three, four and sixteen, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, ten, eleven and fifteen, article nineteen, chapter twenty-nine of said code, all relating to terminating the commission on charitable organizations.

Be it enacted by the Legislature of West Virginia:

That sections three, four and sixteen, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections two, ten, eleven and fifteen, article nineteen, chapter twenty-nine of said code be amended and reenacted, all to read as follows:


1 As used in this article:

2 (1) "Charitable organization" means a person who is 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 advertise-
ment, 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 individual 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 contributions
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,
81 carries on, advises or acts as a consultant to a charitable
82 organization in connection with the solicitation of
83 contributions but does not qualify as "professional
84 fund-raising counsel" within the meaning of this article. A
85 bona fide salaried officer or employee of a charitable
86 organization maintaining a permanent establishment
87 within the state is not a professional solicitor.

88 No attorney, investment counselor or banker, who
89 advises any person to make a contribution to a charitable
90 organization, shall be considered, as the result of such
91 advice, a professional fund-raising counsel or a profes-
92 sional solicitor.

§29-19-10. Information filed to become public records.

Registration statements and applications, reports,
professional fund-raising counsel contracts or professional
solicitor contracts, and all other documents and informa-
tion required to be filed under this article or by the
secretary of state shall become public records in the office
of the secretary of state, and shall be open to the general
public for inspection at such time and under such
conditions as the secretary of state may prescribe.

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

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, 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.

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

(b) In addition to the foregoing, any person who willfully and knowingly violates any provision of this article, or who shall willfully and knowingly give false or incorrect information to the secretary of state in filing statements or reports required by this article, whether such report or statement is verified or not, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined upon first conviction thereof in an amount not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail for not more than six months, or be both fined and imprisoned, and for the second and any subsequent offense to pay a fine of not less than five hundred dollars nor more than one thousand dollars, or be imprisoned for not more than one year, or be both fined and imprisoned.

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

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

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

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

If the court finds that: (1) It is impossible to obtain the names of over one half the persons who were solicited and in violation of this article, or (2) if the majority of individual contributions was of an amount less than five dollars, or (3) if the cost to the state of returning these contributions is equal to or more than the total sum to be refunded, the court shall order the money to be placed in
the custody and control of a general receiver appointed
pursuant to the provisions of article six, chapter fifty-one
of this code. The general receiver shall maintain this
money pursuant to the provisions of article eight, chapter
thirty-six of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect July 1, 1995.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 24th day of March 1995.

Governor