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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



# ENROLLED

HOUSE BILL No. 2279

(By Delegates *J. Martin Love, Michael Fragale, Osborne, Nesbitt + Harrison*)



Passed *March 10,* 1995

In Effect *July 1, 1995* Passage



ENROLLED

H. B. 2279

(BY DELEGATES J. MARTIN, LOVE, MICHAEL, FRAGALE, OSBORNE,  
NESBITT AND HARRISON)

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[Passed March 10, 1995; in effect July 1, 1995]

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nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections two, ten, eleven and fifteen, article nineteen, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

**§29-19-2. Definitions.**

1 As used in this article:

2 (1) "Charitable organization" means a person who is or  
3 holds itself out to be a benevolent, educational, philan-  
4 thropic, humane, patriotic, religious or eleemosynary  
5 organization, or any person who solicits or obtains  
6 contributions solicited from the public for charitable  
7 purposes, or any person who in any manner employs any

8 appeal for contributions which may be reasonably  
9 interpreted to suggest that any part of such contributions  
10 will be used for charitable purposes. A chapter, branch,  
11 area, office or similar affiliate or any person soliciting  
12 contributions within the state for a charitable organization  
13 which has its principal place of business outside the state is  
14 a charitable organization for the purposes of this article.

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

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

22 (a) Any oral or written request;

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

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

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

42 "Solicitation", as defined herein, shall be deemed to  
43 occur when the request is made, at the place the request is

44 received, whether or not the person making the same  
45 actually receives any contribution.

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

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

59 (6) "Person" means any individual, organization, trust,  
60 foundation, group, association, partnership, corporation,  
61 society or any combination of them.

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

73 (8) "Professional solicitor" means any person who, for  
74 a financial or other consideration, solicits contributions  
75 for, or on behalf of a charitable organization, whether  
76 such solicitation is performed personally or through said  
77 person's agents, servants or employees specially employed  
78 by, or for a charitable organization, who are engaged in  
79 the solicitation of contributions under the direction of  
80 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.**

1 Registration statements and applications, reports,  
2 professional fund-raising counsel contracts or professional  
3 solicitor contracts, and all other documents and informa-  
4 tion required to be filed under this article or by the  
5 secretary of state shall become public records in the office  
6 of the secretary of state, and shall be open to the general  
7 public for inspection at such time and under such  
8 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.**

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 rules  
4 prescribed by the secretary of state, keep true fiscal  
5 records as to its activities in this state as may be covered by  
6 this article in such form as will enable it accurately to  
7 provide the information required by this article. Upon  
8 demand, such records shall be made available to the  
9 secretary of state, or the attorney general for inspection.  
10 Such records shall be retained for a period of at least three  
11 years after the end of the period of registration to which  
12 they relate.

**§29-19-15. Enforcement and penalties.**

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

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

26 (c) Whenever the secretary of state, attorney general or  
27 any prosecuting attorney has reason to believe that any  
28 charitable organization, professional fund-raising counsel  
29 or professional solicitor is operating in violation of the  
30 provisions of this article, the secretary of state, attorney  
31 general or prosecuting attorney may bring an action in the  
32 name of the state against such charitable organization and  
33 its officers, such professional fund-raising counsel or  
34 professional solicitor or any other person who has violated  
35 this article in the circuit court of the county wherein the  
36 cause of action arises to enjoin such charitable organiza-  
37 tion or professional fund-raising counsel or professional

38 solicitor or other person from continuing such violation,  
39 solicitation or collection, or from engaging therein or  
40 from doing any acts in furtherance thereof and for such  
41 other relief as the court deems appropriate.


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

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

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

68 If the court finds that: (1) It is impossible to obtain  
69 the names of over one half the persons who were solicited  
70 and in violation of this article, or (2) if the majority of  
71 individual contributions was of an amount less than five  
72 dollars, or (3) if the cost to the state of returning these  
73 contributions is equal to or more than the total sum to be  
74 refunded, the court shall order the money to be placed in

75 the custody and control of a general receiver appointed  
76 pursuant to the provisions of article six, chapter fifty-one  
77 of this code. The general receiver shall maintain this  
78 money pursuant to the provisions of article eight, chapter  
79 thirty-six of this code.





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

Randy Schoonover  
Chairman Senate Committee

Ernest C. Moore  
Chairman House Committee

Originating in the House.

Takes effect July 1, 1995.

Carroll Adams  
Clerk of the Senate

Donald L. Kapp  
Clerk of the House of Delegates

Earl Ray Tomblin  
President of the Senate

Paul Abner  
Speaker of the House of Delegates

The within is approved this the 24<sup>th</sup>  
day of March 1995.

Gaston Caprior  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/23/95

Time 11:30