

SB 708 S

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

Senate Bill No. 708

(BY SENATOR KESSLER)

[Passed March 7, 2007; in effect ninety days from passage.]

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AN ACT to amend and reenact §29-19-5 and §29-19-6 of the Code of West Virginia, 1931, as amended, all relating to the registration of certain charities; and exemptions from registration.

Be it enacted by the Legislature of West Virginia:

That §29-19-5 and §29-19-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§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, donations or grants within this state or to
4 have funds solicited or received on its behalf shall, prior
5 to any solicitation, file a registration statement with the
6 Secretary of State upon forms prescribed by him or her
7 which shall be good for one full year and which shall be
8 refiled in the next and each following year in which the
9 charitable organization is engaged in solicitation
10 activities. If an organization discontinues solicitation at
11 any time after its last registration filing, then it shall
12 file a registration statement reflecting its activities
13 during its last fiscal year in which solicitation in West
14 Virginia took place. It is the duty of the president,
15 chairman or principal officer of the charitable
16 organization to file the statements required under this
17 article. The statements shall be sworn to and shall
18 contain the 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 the
24 person having custody of its financial records;

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

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

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

33 (6) A copy of a balance sheet and a statement or report
34 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 year,
38 the costs and expenses incidental to the fundraising and
39 showing how the funds were disbursed or allocated for
40 the same fiscal year: *Provided*, That for organizations
41 raising more than one hundred thousand dollars per
42 year in contributions excluding grants from
43 governmental agencies or private foundations, the
44 balance sheet and income and expense statement, or
45 financial statement provided, shall be audited by an
46 independent public accountant. Organizations are
47 required to report the amount of money received in the
48 state and the amount spent in the state for charitable
49 purposes;

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

55 (8) Whether the organization intends to solicit
56 contributions, donations or grants from the public
57 directly or have other solicitation done on its behalf by
58 others;

59 (9) Whether the organization is authorized by any
60 other governmental authority to solicit contributions,
61 donations or grants and whether it is or has ever been

62 enjoined by any court from soliciting contributions;

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

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

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

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

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

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

90 (c) The registration forms and any other documents
91 prescribed by the Secretary of State shall be signed by
92 an authorized officer or by an independent public
93 accountant and by the chief fiscal officer of the
94 charitable organization and shall be verified under
95 oath.

96 (d) Every charitable organization receiving less than
97 one million dollars during any year which submits an
98 independent registration to the Secretary of State shall
99 pay an annual registration fee of fifteen dollars; every
100 charitable organization collecting more than one million
101 dollars during one year which submits an independent
102 registration to the Secretary of State shall pay an
103 annual registration fee of fifty dollars; and a parent
104 organization filing on behalf of one or more chapters,
105 branches or affiliates or a single organization filing
106 under different names shall pay a single annual
107 registration fee of fifty dollars for itself and the
108 chapters, branches or affiliates included in the
109 registration statement. All fees and moneys collected by
110 the Secretary of State pursuant to the provisions of this
111 article shall be deposited by the Secretary of State as
112 follows: One-half shall be deposited in the state General
113 Revenue Fund and one-half shall be deposited in the
114 services fees and collections account established by
115 section two, article one, chapter fifty-nine of this code
116 for the operation of the office of the Secretary of State.
117 The Secretary of State shall dedicate sufficient
118 resources from that fund or other funds to provide the
119 services required in this article.

120 (e) For good cause shown, the Secretary of State may
121 extend the due date for the annual filing of a
122 registration statement or report by a charitable

123 organization or a professional fundraiser for a period
124 not to exceed ninety days. During that period, the
125 previously filed registration statement or report of the
126 charitable organization which has been granted the
127 extension remains in effect.

128 (f) In addition to the registration fee required by this
129 section, a charitable organization or professional
130 fundraiser, or both, which fails to file a registration
131 statement or report by the original or extended due date
132 for filing as required by this section shall, for each
133 month or part of the month thereafter in which the
134 registration statement or report is not filed, pay an
135 additional fee of twenty-five dollars: *Provided*, That the
136 total amount of the additional fees for a registration
137 statement or report required to be filed in any one year
138 shall not exceed five hundred dollars. All fees and
139 moneys collected by the Secretary of State pursuant to
140 the provisions of this article shall be deposited by the
141 Secretary of State as follows: One-half shall be
142 deposited in the State General Revenue Fund and
143 one-half shall be deposited in the service fees and
144 collections account established by section two, article
145 one, chapter fifty-nine of this code for the operation of
146 the Office of the Secretary of State. The Secretary of
147 State shall dedicate sufficient resources from that fund
148 or other funds to provide the services required in this
149 article.

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

1 The following charitable organizations are not
2 required to file an annual registration statement with
3 the Secretary of State:

4 (1) Educational institutions, the curriculums of which,
5 in whole or in part, are registered or approved by the
6 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 and licensed nursing homes which are
18 nonprofit and charitable;

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

33 (5) Churches, synagogues, associations or conventions
34 of churches, religious orders or religious organizations

35 that are an integral part of a church which qualifies as
36 tax exempt under the provisions of 26 U. S. C. §501(c)(3)
37 and which qualifies as being exempt from filing an
38 annual return under the provisions of 26 U. S. C. §6033;

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

48 (7) Any charitable organization that does not employ
49 a professional solicitor or fundraiser and does not
50 intend to solicit and receive and does not actually raise
51 or receive contributions, donations or grants from the
52 public in excess of twenty-five thousand dollars during
53 a calendar year.

54 Charitable organizations which do not intend to
55 solicit and receive contributions, donations or grants in
56 excess of twenty-five thousand dollars, but do receive in
57 excess of that amount from the public, shall file the
58 annual registration statement within thirty days after
59 contributions are in excess of twenty-five thousand
60 dollars.

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

.....
Ed White
 Chairman Senate Committee

.....
[Signature]
 Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

.....
Darrell Holmes
 Clerk of the Senate

.....
Suzanne Sawyer
 Clerk of the House of Delegates

.....
Carl Ray Tomblis
 President of the Senate

.....
[Signature]
 Speaker House of Delegates

The within *is approved* this
 the *28th* Day of *March*, 2007.

.....
[Signature]
 Governor

PRESENTED TO THE
GOVERNOR

MAR 20 2007

Time 4:10