

HB 4248

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WEST VIRGINIA
LEGISLATURE
COMMITTEE OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 4248**

(By Delegates Wells, Reynolds,
Manypenny and Lawrence)



Passed March 13, 2010

In Effect Ninety Days From Passage

ENROLLED

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COMMITTEE SUBSTITUTE

FOR

OFFICE OF THE VIRGINIA
SECRETARY OF STATE

H. B. 4248

(BY DELEGATES WELLS, REYNOLDS,
MANYPENNY AND LAWRENCE)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §29-19-2, §29-19-5 and §29-19-6 of the Code of West Virginia, 1931, as amended, all relating to the solicitation of charitable funds; defining the terms “audit” and “financial review”; including other methods of communications in the definition of the term “solicitation”; raising the threshold for exemption from filing audits and registering; and requiring financial reviews for charitable organization raising between \$100,000 and \$200,000 in contributions.

Be it enacted by the Legislature of West Virginia:

That §29-19-2, §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.

§29-19-2. Definitions.

1 As used in this article:

2 (1) "Audit" means the systematic examination of records
3 and documents and the securing of other evidence by
4 confirmation, physical inspection, or otherwise, that includes
5 a written assurance that financial statements and reports are
6 fairly presented in conformity with generally accepted
7 accounting principles issued by the American Institute of
8 Certified Public Accountants.

9 (2) "Charitable organization" means a person who is or
10 holds itself out to be a benevolent, educational, philanthropic,
11 humane, patriotic, religious or eleemosynary organization, or
12 any person who solicits or obtains contributions solicited
13 from the public for charitable purposes, or any person who in
14 any manner employs any appeal for contributions which may
15 be reasonably interpreted to suggest that any part of those
16 contributions will be used for charitable purposes. A chapter,
17 branch, area, office or similar affiliate or any person
18 soliciting contributions within the state for a charitable
19 organization which has its principal place of business outside
20 the state is a charitable organization for the purposes of this
21 article.

22 (3) "Contribution" means the promise or grant of any
23 money or property of any kind or value.

24 (4) "Financial review" means an examination of financial
25 statements in accordance with generally accepted accounting
26 principles issued by the American Institute of Certified
27 Public Accountants, in which a certified public accountant
28 has a reasonable basis for expressing limited assurance that
29 the reviewed statements are free of material misstatements or
30 false or missing information and are found to be accurate,
31 complete and fairly presented to meet the requirements of the
32 generally accepted accounting principles.

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

38 (A) Any oral or written request;

39 (B) Any announcement to the press, over the radio or
40 television, or by telephone, electronic mail or messaging,
41 electronic bulletin board, or Internet technology, concerning
42 an appeal or campaign to which the public is requested to
43 make a contribution for any charitable purpose connected
44 therewith;

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

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

58 “Solicitation”, as defined herein, occurs when the request
59 is made, at the place the request is received, whether or not
60 the person making the request actually receives any
61 contribution.

62 (6) “Federated fund-raising organization” means a
63 federation of independent charitable organizations which

64 have voluntarily joined together, including, but not limited to,
65 a united fund or community chest, for purposes of raising and
66 distributing money for and among themselves and where
67 membership does not confer operating authority and control
68 of the individual agencies upon the federated group
69 organization.

70 (7) "Parent organization" is that part of a charitable
71 organization which coordinates, supervises or exercises
72 control over policy, fund raising and expenditures, or assists,
73 receives funds from or advises one or more chapters,
74 branches or affiliates in the state.

75 (8) "Person" means any individual, organization, trust,
76 foundation, group, association, partnership, corporation,
77 society or any combination of them.

78 (9) "Professional fund-raising counsel" means any person
79 who for a flat fixed fee under a written agreement plans,
80 conducts, manages, carries on, advises or acts as a consultant,
81 whether directly or indirectly, in connection with soliciting
82 contributions for, or on behalf of any charitable organization
83 but who actually solicits no contributions as a part of the
84 services. A bona fide salaried officer or employee of a
85 charitable organization maintaining a permanent establishment
86 within the state is not a professional fund-raising counsel.

87 (10) "Professional solicitor" means any person who, for
88 a financial or other consideration, solicits contributions for,
89 or on behalf of a charitable organization, whether the
90 solicitation is performed personally or through that person's
91 agents, servants or employees specially employed by, or for
92 a charitable organization, who are engaged in the solicitation
93 of contributions under the direction of that person, or a
94 person who plans, conducts, manages, carries on, advises or
95 acts as a consultant to a charitable organization in connection

96 with the solicitation of contributions but does not qualify as
97 “professional fund-raising counsel” within the meaning of
98 this article. A bona fide salaried officer or employee of a
99 charitable organization maintaining a permanent establishment
100 within the state is not a professional solicitor.

101 No attorney, investment counselor or banker, who
102 advises any person to make a contribution to a charitable
103 organization, is considered, as the result of the advice, a
104 professional fund-raising counsel or a professional solicitor.

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

1 (a) Every charitable organization, except as provided in
2 section six of this article, which intends to solicit
3 contributions, donations or grants within this state or to have
4 funds solicited or received on its behalf shall, prior to any
5 solicitation, file a registration statement with the Secretary of
6 State upon forms prescribed by him or her which shall be
7 good for one full year and which shall be refiled in the next
8 and each following year in which the charitable organization
9 is engaged in solicitation activities. If an organization
10 discontinues solicitation at any time after its last registration
11 filing, then it shall file a registration statement reflecting its
12 activities during its last fiscal year in which solicitation in
13 West Virginia took place. It is the duty of the president,
14 chairman or principal officer of the charitable organization to
15 file the statements required under this article. The statements
16 shall be sworn to and shall contain the following information:

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

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

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

25 (4) The place where and the date when the organization
26 was legally established and the form of its organization;

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

29 (6) A copy of a balance sheet and a statement or report of
30 income and expenses for the organization's immediately
31 preceding fiscal year or a financial statement reporting
32 information showing the kind and amount of funds raised
33 during the preceding fiscal year, the costs and expenses
34 incidental to the fundraising and showing how the funds were
35 disbursed or allocated for the same fiscal year: *Provided,*
36 That in addition to the financial documents required by this
37 subdivision:

38 (A) Charitable organizations raising more than \$200,000
39 per year in contributions, excluding grants from
40 governmental agencies or private foundations, shall submit
41 a report of an audit by an independent certified public
42 accountant, and

43 (B) Charitable organizations raising more than \$100,000
44 per year but less than \$200,001 per year in contributions,
45 excluding grants from governmental agencies or private
46 foundations, shall submit a statement of financial review by
47 an independent certified public accountant. Organizations are
48 required to report the amount of money received in the state
49 and the amount spent in the state for charitable purposes;

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

53 990 and Schedule A for every charitable organization and
54 any parent organization;

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

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

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

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

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

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

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

75 (b) Each chapter, branch or affiliate, except an
76 independent member agency of a federated fund-raising
77 organization, may separately report the information required
78 by this section or report the information to its parent
79 organization which shall then furnish the information
80 regarding its West Virginia affiliates, chapters and branches

81 in a consolidated form to the Secretary of State. An
82 independent member agency of a federated fund-raising
83 organization, as defined in section two of this article, shall
84 comply with the provisions of this article independently.
85 Each organization shall file a separate registration form for
86 each name under 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 an
89 authorized officer or by an independent public accountant
90 and by the chief fiscal officer of the charitable organization
91 and shall be verified under oath.

92 (d) Every charitable organization receiving less than \$1
93 million during any year which submits an independent
94 registration to the Secretary of State shall pay an annual
95 registration fee of \$15; every charitable organization
96 collecting more than \$1 million during one year which
97 submits an independent registration to the Secretary of State
98 shall pay an annual registration fee of \$50; and a parent
99 organization filing on behalf of one or more chapters,
100 branches or affiliates or a single organization filing under
101 different names shall pay a single annual registration fee of
102 \$50 for itself and the chapters, branches or affiliates included
103 in the registration statement. All fees and moneys collected
104 by the Secretary of State pursuant to the provisions of this
105 article shall be deposited by the Secretary of State as follows:
106 One-half shall be deposited in the state General Revenue
107 Fund and one-half shall be deposited in the services fees and
108 collections account established by section two, article one,
109 chapter fifty-nine of this code for the operation of the office
110 of the Secretary of State. The Secretary of State shall
111 dedicate sufficient resources from that fund or other funds to
112 provide the services required in this article.

113 (e) For good cause shown, the Secretary of State may
114 extend the due date for the annual filing of a registration

115 statement or report by a charitable organization or a
116 professional fundraiser for a period not to exceed ninety days.
117 During that period, the previously filed registration statement
118 or report of the charitable organization which has been
119 granted the extension remains in effect.

120 (f) In addition to the registration fee required by this
121 section, a charitable organization or professional fundraiser,
122 or both, which fails to file a registration statement or report
123 by the original or extended due date for filing as required by
124 this section shall, for each month or part of the month
125 thereafter in which the registration statement or report is not
126 filed, pay an additional fee of \$25: *Provided*, That the total
127 amount of the additional fees for a registration statement or
128 report required to be filed in any one year may not exceed
129 \$500. All fees and moneys collected by the Secretary of
130 State pursuant to the provisions of this article shall be
131 deposited by the Secretary of State as follows: One-half shall
132 be deposited in the state General Revenue Fund and one-half
133 shall be deposited in the service fees and collections account
134 established by section two, article one, chapter fifty-nine of
135 this code for the operation of the Office of the Secretary of
136 State. The Secretary of State shall dedicate sufficient
137 resources from that fund or other funds to provide the
138 services required in this article.

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

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

4 (1) Educational institutions, the curriculums of which, in
5 whole or in part, are registered or approved by the State
6 Board of Education, either directly or by acceptance of

7 accreditation by an accrediting body recognized by the State
8 Board of Education; and any auxiliary associations,
9 foundations and support groups which are directly
10 responsible to the educational institutions;

11 (2) Persons requesting contributions for the relief of any
12 individual specified by name at the time of the solicitation
13 when all of the contributions collected without any
14 deductions whatsoever are turned over to the named
15 beneficiary for his or her use;

16 (3) Hospitals and licensed nursing homes which are
17 nonprofit and charitable;

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

31 (5) Churches, synagogues, associations or conventions of
32 churches, religious orders or religious organizations that are
33 an integral part of a church which qualifies as tax exempt
34 under the provisions of 26 U.S.C. §501(c)(3) and which
35 qualifies as being exempt from filing an annual return under
36 the provisions of 26 U.S.C. §6033;

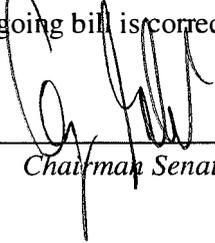
37 (6) Any person, firm, corporation or organization that
38 sponsors a single fund-raising event for the benefit of a

39 named charitable organization where all or part of the funds
40 collected are donated to the named charitable organization:
41 *Provided*, That the named charitable organization receiving
42 the funds is registered pursuant to this article, reports each of
43 these donations individually and certifies that no funds were
44 withheld by the organization that solicited the funds;

45 (7) Any charitable organization that does not employ a
46 professional solicitor or fundraiser and does not intend to
47 solicit and receive and does not actually raise or receive
48 contributions, donations or grants from the public in excess
49 of \$25,000 during a calendar year.

50 Charitable organizations which do not intend to solicit
51 and receive contributions, donations or grants in excess of
52 25,000, but do receive in excess of that amount from the
53 public, shall file the annual registration statement within
54 thirty days after contributions are in excess of \$25,000.

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

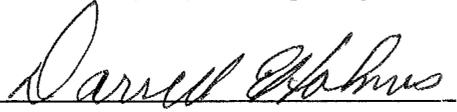


Chairman Senate Committee

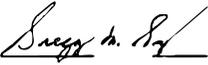

Chairman House Committee

Originating in the House.

In effect ninety days from passage.



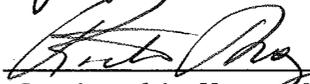
Clerk of the Senate



Clerk of the House of Delegates

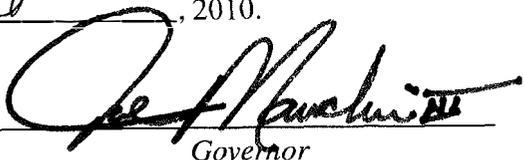


President of the Senate



Speaker of the House of Delegates

The within is approved this the 1st
day of April, 2010.



Governor

PRESENTED TO THE
GOVERNOR

MAR 29 2010

Time 10:05 AM