WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4248

(By Delegates Wells, Reynolds, Manypenny and Lawrence)

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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.

As used in this article:

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

(2) “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 those 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.

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

(4) “Financial review” means an examination of financial statements in accordance with generally accepted accounting principles issued by the American Institute of Certified Public Accountants, in which a certified public accountant has a reasonable basis for expressing limited assurance that the reviewed statements are free of material misstatements or false or missing information and are found to be accurate, complete and fairly presented to meet the requirements of the generally accepted accounting principles.
(5) "Solicit" and "solicitation" means the request or appeal, directly or indirectly, for any contribution on the plea or representation that the contribution will be used for a charitable purpose, including, without limitation, the following methods of requesting a contribution:

(A) Any oral or written request;

(B) Any announcement to the press, over the radio or television, or by telephone, electronic mail or messaging, electronic bulletin board, or Internet technology, 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 an appeal as an inducement or reason for making the sale, or when or where in connection with the sale, any statement is made that the whole or any part of the proceeds from the sale will be donated to any charitable purpose.

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

(6) "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.

(7) "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.

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

(9) "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 the services. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state is not a professional fund-raising counsel.

(10) "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of a charitable organization, whether the solicitation is performed personally or through that 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 that 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 charitable organization, is considered, as the result of the advice, a professional fund-raising counsel or a professional solicitor.

§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, donations or grants within this state or to have funds solicited or received 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 the charitable organization is engaged in solicitation activities. If an organization discontinues solicitation at any time after its last registration filing, then it shall file a registration statement reflecting its activities during its last fiscal year in which solicitation in West Virginia took place. It is the duty of the president, chairman or principal officer of the charitable organization to file the statements required under this article. The 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 and 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 to the fundraising and showing how the funds were disbursed or allocated for the same fiscal year: Provided, That in addition to the financial documents required by this subdivision:

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

(B) Charitable organizations raising more than $100,000 per year but less than $200,001 per year in contributions, excluding grants from governmental agencies or private foundations, shall submit a statement of financial review by an independent certified public accountant. Organizations are required to report the amount of money received 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, donations or grants from the public directly or have other solicitation done on its behalf by others;

(9) Whether the organization is authorized by any other governmental authority to solicit contributions, donations or grants 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 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 information required by this section or report the information to its parent organization which shall then furnish the information regarding 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 defined in section two of this article, 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 receiving less than $1 million during any year which submits an independent registration to the Secretary of State shall pay an annual registration fee of $15; every charitable organization collecting more than $1 million during one year which submits an independent registration to the Secretary of State shall pay an annual registration fee of $50; and 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 $50 for itself and the chapters, branches or affiliates included in the registration statement. All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the state General Revenue Fund and one-half shall be deposited in the services fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

(e) For good cause shown, the Secretary of State may extend the due date for the annual filing of a registration
statement or report by a charitable organization or a professional fundraiser for a period not to exceed ninety days. During that period, the previously filed registration statement or report of the charitable organization which has been granted the extension remains in effect.

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

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

The following charitable organizations are not 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 the 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 and licensed nursing homes 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” does 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, including the right to vote, to elect officers, directors and issues, to hold office or otherwise as ordinarily conferred on members of the 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) and which qualifies as being exempt from filing an annual return under the provisions of 26 U.S.C. §6033;

(6) Any person, firm, corporation or organization that 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 a.m.