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HOUSE BILL NO. 1214

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Mims
on February 24, 2000)

(Patron Prior to Substitute—Delegate Cantor)

A BILL to amend and reenact §§ 57-48, 57-57, 57-59 and 59.1-9.10 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 57-51.1, relating to the Solicitation of Contributions Act; enforcement.

Be it enacted by the General Assembly of Virginia:

1. That §§ 57-48, 57-57, 57-59 and 59.1-9.10 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 57-51.1 as follows:

§ 57-48. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Agriculture and Consumer Services.

"Commissioner" means the Commissioner of Agriculture and Consumer Services, or a member of his staff to whom he may delegate his duties under this chapter.

"Charitable organization" means any person which is or holds itself out to be organized or operated for any charitable purpose, or any person which solicits or obtains contributions solicited from the public. This definition shall not be deemed to include (i) any church or convention or association of churches, primarily operated for nonsecular purposes and no part of the net income of which inures to the direct benefit of any individual; (ii) any political party as defined in § 24.2-101 or any political campaign committee required by state or federal law to file a report or statement of contributions and expenditures; or (iii) any authorized individual who solicits, by authority of such organization, solely on behalf of a registered or exempt charitable organization or on behalf of an organization excluded from the definition of charitable organization.

"Charitable purpose" means any charitable, benevolent, humane, philanthropic, patriotic, or eleemosynary purpose and the purposes of influencing legislation or influencing the actions of any public official or instigating, prosecuting, or intervening in litigation.

"Civic organization" means any local service club, veterans' post, fraternal society or association, volunteer fire or rescue groups, or local civic league or association of ten or more persons not organized for profit but operated exclusively for educational or charitable purposes as defined herein, including the promotion of community welfare, and the net earnings of which are devoted exclusively to charitable, educational, recreational or social welfare purposes.

"Contribution" means any gift, bequest, devise or other grant of any money, credit, financial assistance or property of any kind or value, including the promise to contribute, except payments by the membership of an organization for membership fees, dues, fines, or assessments, or for services rendered to individual members, and except money, credit, financial assistance or property received from any governmental authority. The term "contribution" shall not include any donation of blood or any gift made pursuant to Article 2 (§ 32.1-289 et seq.) of Chapter 8 of Title 32.1.

"Federated fund-raising organization" means any 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.

"Fund-raising expenses" means the expenses of all activities that constitute or are an integral and inseparable part of a solicitation.

"Membership" means those persons to whom, for payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor or other direct benefit, in addition to the right to vote, elect officers, or hold offices. The term "membership" shall not include those persons who are granted a membership upon making a contribution as the result of solicitation.

"Older Virginians" means persons aged sixty or older.

"Parent organization" means that part of a charitable organization which coordinates, supervises or exercises control over policy, fund raising, and expenditures, or assists or advises one or more chapters, branches or affiliates.

"Person" means any individual, organization, trust, foundation, association, partnership, corporation, society, or other group or combination acting as a unit.

"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

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60 indirectly, in connection with soliciting contributions for, or on behalf of, any charitable or civic
61 organization, but who actually solicits no contributions as a part of such services. A bona fide salaried
62 officer or employee of a registered or exempt charitable organization or the bona fide salaried officer or
63 employee of a registered parent organization shall not be deemed to be a professional fund-raising
64 counsel.

65 "Professional solicitor" means any person who, for a financial or other consideration, solicits
66 contributions for, or on behalf of, a charitable or civic organization, whether such solicitation is
67 performed personally or through his agents, servants, or employees or through agents, servants, or
68 employees specially employed by, or for a charitable or civic organization, who are engaged in the
69 solicitation of contributions under the direction of such person, or any person who, for a financial or
70 other consideration, plans, conducts, manages, carries on, advises or acts as a consultant to a charitable
71 or civic organization in connection with the solicitation of contributions but does not qualify as a
72 professional fund-raising counsel. A bona fide salaried officer or employee of a registered or exempt
73 charitable organization or a bona fide salaried officer or employee of a registered parent organization
74 shall not be deemed to be a professional solicitor.

75 "Sale," "sell" and "sold" mean the transfer of any property or the rendition of any service to any
76 person in exchange for consideration, including any purported contribution without which such property
77 would not have been transferred or such services would not have been rendered.

78 "Solicit" and "solicitation" mean the request or appeal, directly or indirectly, for any contribution on
79 the plea or representation that such contribution will be used for a charitable purpose, including, without
80 limitation, the following methods of requesting such contribution:

81 1. Any oral or written request;

82 2. Any announcement to the press, over the radio or television, or by telephone or telegraph
83 concerning an appeal or campaign to which the public is requested to make a contribution for any
84 charitable purpose connected therewith;

85 3. The distribution, circulation, posting or publishing of any handbill, written advertisement or other
86 publication which directly or by implication seeks to obtain public support; or

87 4. The sale of, offer or attempt to sell, any advertisement, advertising space, subscription, ticket, or
88 any service or tangible item in connection with which any appeal is made for any charitable purpose or
89 where the name of any charitable or civic organization is used or referred to in any such appeal as an
90 inducement or reason for making any such sale, or when or where in connection with any such sale, any
91 statement is made that the whole or any part of the proceeds from any such sale will be donated to any
92 charitable purpose.

93 "Solicitation" as defined herein, shall be deemed to occur when the request is made, at the place the
94 request is received, whether or not the person making the same actually receives any contribution.

95 § 57-57. Prohibited acts.

96 A. No charitable organization shall use or exploit the fact of registration under this chapter so as to
97 lead the public to believe that such registration in any manner constitutes an endorsement or approval by
98 this Commonwealth. The use of the following statement shall not be deemed a prohibited exploitation,
99 "Registered with the Commissioner as required by law. Registration does not imply endorsement of a
100 public solicitation for contributions."

101 B. No person shall, in connection with the solicitation of contributions or the sale of tangible
102 personal property or services represent, or lead anyone by any manner, means, practice or device
103 whatsoever to believe, that the person on whose behalf such solicitation or sale is being conducted is a
104 bona fide charitable organization or that the proceeds of such solicitation or sale will be used for
105 charitable purposes, if he has reason to believe such not to be the fact.

106 C. No person shall, in connection with the solicitation of contributions or the sale of tangible
107 personal property or services for charitable purposes, represent or lead anyone by any manner, means,
108 practice or device whatsoever to believe, that any other person sponsors or endorses such solicitation of
109 contributions, sale of tangible personal property or services for charitable purposes or approves of such
110 charitable purposes or a charitable organization connected therewith when such other person has not
111 given written consent to the use of his name for these purposes.

112 Any member of the board of directors or trustees of a charitable organization or any other person
113 who has agreed either to serve or to participate in any voluntary capacity in the campaign shall be
114 deemed thereby to have given his consent to the use of his name in said campaign. Nothing contained
115 in this section shall prevent the publication of names of contributors without their written consents, in an
116 annual or other periodic report issued by a charitable organization for the purpose of reporting on its
117 operations and affairs to its membership or for the purpose of reporting contributions to contributors.

118 D. No person shall denominate any membership fee or purchase price of goods or services sold, as a
119 contribution or as a donation or in any other manner represent or imply that the member or the
120 purchaser of such goods or services will be entitled to an income tax deduction for his cost or any
121 portion thereof unless:

1. A signed opinion of counsel or an Internal Revenue Service ruling or determination letter holding such cost to be deductible has been obtained; or

2. The member or purchaser is informed in writing that such cost may not be deductible.

No person shall represent or imply that a contributor will be entitled to an income tax deduction for his contribution unless a signed opinion of counsel or an Internal Revenue Service ruling or determination letter holding gifts to such organization to be deductible has been obtained.

E. No person shall make any representation that he is soliciting contributions for or on behalf of a charitable or civic organization or shall use or display any emblem, device or printed matter belonging to or associated with a charitable or civic organization for the purpose of soliciting or inducing contributions from the public without first being authorized to do so by the charitable or civic organization.

F. No professional solicitor shall solicit in the name of or on behalf of any charitable or civic organization unless such solicitor has:

1. Written authorization of two officers of such organization, a copy of which shall be filed with the Commissioner. Such written authorization shall bear the signature of the solicitor and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date issued.

2. Such authorization with him when making solicitations and exhibits it on request to persons solicited, police officers, or agents of the Commissioner.

G. No charitable or civic organization shall accept any contribution exceeding five dollars in cash or tangible property without providing, on request of the donor, a written receipt acknowledging such contribution on behalf of the organization.

H. No person, and no organization of which such person is an officer, professional fund-raising counsel or professional solicitor, shall solicit within this Commonwealth if:

1. Such person has been convicted in any jurisdiction of embezzlement, larceny or other crime involving the obtaining of money or property by false pretenses or the misapplication of funds impressed with a trust, unless such person has received a pardon for such offense or the public is informed of such conviction in a manner approved in writing by the Commissioner before any solicitation occurs; or

2. Such person has ever been enjoined by any court or otherwise prohibited from soliciting in any jurisdiction, unless the Commissioner first determines in writing that such person is entitled to solicit in such jurisdiction at the time of soliciting within this Commonwealth or that the reason for such injunction or prohibition does not involve moral turpitude.

I. No person shall solicit within this Commonwealth for the benefit of any other person located without the Commonwealth, if such other person refuses to supply any information which the Commissioner deems necessary to assure himself that the provisions of this chapter are complied with. A solicitation shall be deemed to be on behalf of every person who or which receives, directly or indirectly, more than ten percent of the gross amount collected.

J. No charitable or civic organization shall allow a professional solicitor to solicit on its behalf if the professional solicitor has not registered pursuant to § 57-61.

K. No charitable or civic organization, professional fund-raising counsel or professional solicitor shall solicit in this Commonwealth without being duly registered or granted the appropriate exempt status under this chapter.

L. No person shall employ in any solicitation or collection of contributions for a charitable purpose any device, scheme or artifice to defraud or obtain money or property by any misrepresentation or misleading statement.

M. No officer, agent, director or trustee of any charitable or civic organization, professional fund-raising counsel or professional solicitor shall refuse or fail, after notice, to produce to the Commissioner any books and records of such organization.

N. No person shall use or permit the use of the funds raised by a charitable solicitation for any purpose other than the solicited purpose or, with respect to funds raised by general appeals, the general purposes of the charitable or civic organization on whose behalf the solicitation was made.

O. No person shall knowingly and willfully make any false statements in any registration application or statement, report or other disclosure required by this chapter.

P. No professional solicitor shall solicit on behalf of a charitable or civic organization unless the charitable or civic organization has registered or been granted the appropriate exempt status under this chapter.

Q. No person shall represent, in any solicitation, that tickets to events will be donated for use by another unless he complies with the following requirements:

1. He shall have obtained commitments, in writing, from persons or charitable or civic organizations stating that they will accept donated tickets and specifying the number of persons for whom they are willing to accept tickets;

2. He shall not collect or accept more contributions for donated tickets than the number of ticket commitments he has received from persons or charitable or civic organizations;

3. He shall have printed in advance on each ticket the exact number of persons to be admitted by the ticket and the dollar price or value of each ticket;

4. He shall distribute the tickets in a timely fashion to those having given commitments; and

5. He shall maintain during the solicitation and for a period of three years thereafter: (i) records reflecting the name and address of each contributor and the amount of money and number of tickets donated by each such contributor; and (ii) the written commitments of each person or charitable or civic organization to accept tickets and specifying the number of persons on whose behalf tickets were to be accepted, as required in subdivision 1 of subsection Q of this section.

R. No professional solicitor subject to this chapter shall solicit in this Commonwealth any older Virginian whose name, address and telephone number were provided to the Commissioner in accordance with § 57-51.1.

§ 57-51.1. Commissioner to establish procedures; older Virginians.

The Commissioner shall establish procedures for older Virginians to submit their names, mailing and street addresses, and telephone numbers, if they do not want to be solicited for contributions, for inclusion on a list to be developed and maintained by the Commissioner. The list shall be provided to any professional solicitor subject to this chapter in electronic format or in hard-copy form.

§ 57-59. Enforcement of chapter; penalties.

A. Any person who willfully and knowingly violates or causes to be violated any provision of this chapter, or who willfully and knowingly gives false or incorrect information to the Commissioner in filing statements or reports required by this chapter, whether such report or statement is verified or not, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not less than \$100 and not more than \$1,000 or by confinement in jail for not more than six months, or both, and for the second and any subsequent offense by a fine of not less than \$500 and not more than \$2,500 or by confinement in jail for not more than one year, or both.

B. Whenever the Commissioner has reasonable cause to believe that a violation of this chapter may have occurred, the Commissioner, upon his own motion or upon complaint of any person, may investigate any charitable or civic organization, professional fund-raising counsel or professional solicitor to determine whether such charitable or civic organization, professional fund-raising counsel or professional solicitor has violated the provisions of this chapter. In the conduct of such investigation, the Commissioner may:

1. Require or permit any person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all facts and circumstances concerning the matter to be investigated.

2. Administer oaths or affirmations and, upon his motion or upon request of any party, subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangibles and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

Any proceedings or hearings by the Commissioner under this chapter, where witnesses are subpoenaed and their attendance is required for evidence to be taken or any matter is to be produced to ascertain material evidence, shall take place within the City of Richmond.

Upon failure to obey a subpoena and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit Court of the City of Richmond for an order imposing punishment for contempt of the subpoena or compelling compliance.

C. Whenever the Attorney General has reasonable cause to believe that any person has operated, is operating or is about to operate in violation of the provisions this chapter, the Attorney General may issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil investigative demands issued pursuant to this subsection.

~~C.D.~~ Whenever the Attorney General, or any attorney for the Commonwealth or the attorney for any city, county or town has reason to believe that any charitable or civic organization, professional fund-raising counsel or professional solicitor has operated, is operating or is about to operate in violation of the provisions of this chapter, the Attorney General, attorney for the Commonwealth or the attorney for any city, county or town, in addition to all other actions authorized by law, may bring an action in the name of the Commonwealth against such charitable or civic organization, professional fund-raising counsel or professional solicitor, or their officers, directors, or other agents to enjoin the continuation of such violation, solicitation or collection, or the engaging therein, or the conducting of any acts in furtherance thereof and for such other relief as the court deems appropriate.

~~D. E.~~ In any action brought under subsection ~~C~~ of this section, the court may also award to the Commonwealth a civil penalty of not more than \$5,000 per violation, to be paid to the Literary Fund, reasonable expenses incurred by the state or local agency in investigating and preparing the case, not to exceed \$250 per violation, and attorney's fees. Such expenses and attorney's fees shall be paid into the

general fund of the Commonwealth or of the county, city, or town which such attorney represented.

§ 59.1-9.10. Investigation by Attorney General of suspected violations; civil investigative demand to witnesses; access to business records, etc.

(a) A. Whenever it shall appear to the Attorney General, either upon complaint or otherwise, that any person has engaged in, or is engaging in, or is about to engage in any act or practice prohibited by this chapter, the Attorney General may in his discretion either require or permit such person to file with him a statement in writing or otherwise, under oath, as to all facts and circumstances concerning the subject matter. The Attorney General may also require such other data and information as he may deem relevant to the subject matter of an investigation of a possible violation of this chapter and may make such special and independent investigations as he may deem necessary in connection with such matter.

(b) B. In connection with any such investigation, the Attorney General, or his designee, is empowered to issue a civil investigative demand to witnesses by which he may (i) compel the attendance of such witnesses; (ii) examine such witnesses under oath before himself or a court of record; (iii) subject to subsection (e) of this section C, require the production of any books or papers that he deems relevant or material to the inquiry; and (iv) issue written interrogatories to be answered by the witness served or, if the witness served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the witness. The above investigative powers shall not abate or terminate by reason of any action or proceeding brought by the Attorney General under this chapter. When documentary material is demanded by a civil investigative demand, said demand shall not: (1) contain any requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this Commonwealth; or (2) require the disclosure of any documentary material that would be privileged, or production of which for any other reason would not be required by a subpoena duces tecum issued by a court of this Commonwealth.

(c) C. Where the information requested pursuant to a civil investigative demand may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based therein, and the burden of deriving or ascertaining the answer is substantially the same for the Attorney General as for the party from whom such information is requested, it is sufficient for that party to specify the records from which the answer may be derived or ascertained and to afford the Attorney General, or other individuals properly designated by the Attorney General, reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. Further, the Attorney General is hereby authorized, and may so elect, to require the production pursuant to this section, of documentary material before or after the taking of any testimony of the person summoned pursuant to a civil investigative demand, in which event, said documentary matter shall be made available for inspection and copying during normal business hours at the principal place of business of the person served, or at such other time and place, as may be agreed upon by the person served and the Attorney General.

(d) D. Any civil investigative demand issued by the Attorney General shall contain the following information:

(1) 1. The statute and section hereof, the alleged violation of which is under investigation and the subject matter of the investigation;

(2) 2. The date and place at which time the person is required to appear to produce documentary material in his possession, custody or control in the office of the Attorney General located in Richmond, Virginia. Such date shall not be less than twenty days from the date of the civil investigative demand.

(3) 3. Where documentary material is required to be produced, the same shall be described by class so as to clearly indicate the material demanded.

(e) E. Service of civil investigative demand of the Attorney General as provided herein may be made by:

(1) 1. Delivery of a duly executed copy thereof to the person served, or if a person is not a natural person, to the principal place of business of the person to be served, or

(2) 2. Mailing by certified mail, return receipt requested, a duly executed copy thereof addressed to the person to be served at his principal place of business in this Commonwealth, or if said person has no place of business in this Commonwealth, to his principal office.

(f) F. Within twenty days after the service of any such demand upon any person or enterprise, or at any time before the return date specified in the demand, whichever period is shorter, such party may file, in the Circuit Court of the City of Richmond and serve upon the Attorney General a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the

provisions of this chapter or upon any constitutional or other legal right or privilege of such party. The provisions of this subsection shall be the exclusive means for a witness summoned pursuant to a civil investigative demand under this section to challenge a civil investigative demand issued pursuant to subsection ~~(b)~~B.

~~(g)~~ G. The examination of all witnesses under this section shall be conducted by the Attorney General, or his designee, before an officer authorized to administer oaths in this Commonwealth. The testimony shall be taken stenographically or by a sound recording device and shall be transcribed.

~~(h)~~ H. Any person required to testify or to submit documentary evidence shall be entitled, on payment of lawfully prescribed cost, to procure a copy of any document produced by such person and of his own testimony as stenographically reported or, in the case of depositions, as reduced to writing by or under the direction of a person taking the deposition. Any party compelled to testify or to produce documentary evidence may be accompanied and advised by counsel, but counsel may not, as a matter of right, otherwise participate in the investigation.

~~(i)~~ I. All persons served with a civil investigative demand by the Attorney General under this chapter, other than any person or persons whose conduct or practices are being investigated or any officer, director or person in the employ of such person under investigation, shall be paid the same fees and mileage as paid witnesses in the courts of this Commonwealth. No person shall be excused from attending such inquiry pursuant to the mandate of a civil investigative demand, or from producing a paper or from being examined or required to answer questions on the ground of failure to tender or pay a witness fee or mileage unless demand therefor is made at the time testimony is about to be taken and as a condition precedent to offering such production or testimony and unless payment thereof is not thereupon made.

~~(j)~~ J. Any natural person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce documentary evidence, if in his power to do so, in obedience of a civil investigative demand or lawful request of the Attorney General or those properly authorized by the Attorney General, pursuant to this section, shall be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not more than \$5,000, or by imprisonment in jail for not more than one year, or both such fine and imprisonment.

Any natural person who commits perjury or false swearing or contempt in answering, or failing to answer, or in producing evidence or failing to do so in accordance with a civil investigative demand or lawful request by the Attorney General, pursuant to this section, shall be guilty of a misdemeanor and upon conviction therefor by a court of competent jurisdiction shall be punished by a fine of not more than \$5,000, or by imprisonment in jail for not more than one year, or both such fine and imprisonment.

~~(k)~~ K. In any investigation brought by the Attorney General pursuant to this chapter, no individual shall be excused from attending, testifying or producing documentary material, objects or intangible things in obedience to a civil investigative demand or under order of the court on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to any penalty, but no testimony or other information compelled either by the Attorney General or under order of the court, or any information directly or indirectly derived from such testimony or other information, may be used against the individual or witness in any criminal case. However, he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or failing to answer, or in producing evidence or failing to do so in accordance with the order of the Attorney General or the court. If an individual refuses to testify or produce evidence after being granted immunity from prosecution and after being ordered to testify or produce evidence as aforesaid, he may be adjudged in civil contempt by a court of competent jurisdiction and committed to the county jail until such time as he purges himself of contempt by testifying, producing evidence or presenting a written statement as ordered. The foregoing shall not prevent the Attorney General from instituting other appropriate contempt proceedings against any person who violates any of the above provisions.

~~(l)~~ L. It shall be the duty of all public officials, both state and local, their deputies, assistants, clerks, subordinates or employees, and all other persons to render and furnish to the Attorney General, his deputy or other designated representative, when so requested, all information and assistance in their possession or within their power. Any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall disclose to any such person other than the Attorney General the name of any witness examined or any other information obtained upon such inquiry, except as so directed by the Attorney General, shall be guilty of a misdemeanor and subject to the sanctions prescribed in subsection ~~(j)~~J. Such inquiry may upon written authorization of the Attorney General be made public.

~~(m)~~ M. The Attorney General may promulgate rules and regulations to implement and carry out the provisions of this section.

~~(n)~~ N. It shall be the duty of the Attorney General, or his designees, to maintain the secrecy of all evidence, testimony, documents or other results of such investigations. Violation of this subsection shall be a misdemeanor. Nothing herein contained shall be construed to prevent ~~the~~ (i) the disclosure of any

368 such investigative evidence by the Attorney General in his discretion to any federal or state
369 law-enforcement authority that has restrictions governing confidentiality similar to those contained in this
370 subsection *or (ii) the presentation and disclosure of any such investigative evidence by the Attorney*
371 *General, in his discretion, in any action or proceeding brought by the Attorney General under this*
372 *chapter.*