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SENATE BILL NO. 1156

Senate Amendments in [] — January 20, 2003

A BILL to amend and reenact §§ 57-48, 57-49, 57-55.3, 57-59, and 57-60 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 57-61.2, relating to solicitation of contributions; commercial coventurers.

Patrons Prior to Engrossment—Senators Ticer and Whipple

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 57-48, 57-49, 57-55.3, 57-59, and 57-60 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 57-61.2 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 or political action committee [or other political 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.

"Charitable sales promotion" means advertised sales that feature the names of both the commercial co-venturer and the charitable or civic organization and which state that the purchase or use of the goods, services, entertainment, or any other thing of value that the commercial coventurer normally sells, will benefit the charitable or civic organization or its purposes. To qualify as a charitable sales promotion, the consumer must pay the same price for the thing of value as the commercial coventurer usually charges without the charitable sales promotion and the consumer retains the thing of value.

"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.

"Commercial coventurer" means any person who (i) is organized for profit, (ii) is regularly and primarily engaged in trade or commerce, other than in connection with soliciting for charitable or civic organizations or charitable purposes, and (iii) conducts an advertised charitable sales promotion for a specified limited period of time.

"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

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59 inseparable part of a solicitation.

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

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

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

70 "Professional fund-raising counsel" means any person who for a flat fixed fee under a written
71 agreement plans, conducts, manages, carries on, advises or acts as a consultant, whether directly or
72 indirectly, in connection with soliciting contributions for, or on behalf of, any charitable or civic
73 organization, but who actually solicits no contributions as a part of such services. A bona fide salaried
74 officer or employee of a registered or exempt charitable organization or the bona fide salaried officer or
75 employee of a registered parent organization shall not be deemed to be a professional fund-raising
76 counsel.

77 "Professional solicitor" means any person who, for a financial or other consideration, solicits
78 contributions for, or on behalf of, a charitable or civic organization, whether such solicitation is
79 performed personally or through his agents, servants, or employees or through agents, servants, or
80 employees specially employed by, or for a charitable or civic organization, who are engaged in the
81 solicitation of contributions under the direction of such person, or any person who, for a financial or
82 other consideration, plans, conducts, manages, carries on, advises or acts as a consultant to a charitable
83 or civic organization in connection with the solicitation of contributions but does not qualify as a
84 professional fund-raising counsel. A bona fide salaried officer or employee of a registered or exempt
85 charitable organization or a bona fide salaried officer or employee of a registered parent organization
86 shall not be deemed to be a professional solicitor.

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

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

93 1. Any oral or written request;

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

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

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

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

107 § 57-49. Registration of charitable organizations.

108 A. Every charitable organization, except as otherwise provided in this chapter, which intends to
109 solicit contributions within ~~this~~ the Commonwealth, or have funds solicited on its behalf, shall, prior to
110 any solicitation, file an initial registration statement with the Commissioner upon forms acceptable to
111 him. Each registration statement shall thereafter be refiled on or before the fifteenth day of the fifth
112 calendar month of the next and each following fiscal year in which such charitable organization is
113 engaged in solicitation activities within this Commonwealth. It shall be the duty of the president,
114 chairman or principal officer of such charitable organization to file the statements required under this
115 chapter. Such statement shall contain the following information:

116 1. The name of the organization and the purpose for which it was organized.

117 2. The principal address of the organization, the address of any offices in this Commonwealth and its
118 designated agent for process within the Commonwealth. If no such agent is designated, the organization
119 shall be deemed to have designated the Secretary of the Commonwealth. If the organization does not
120 maintain an office, the name and address of the person having custody of its financial records.

- 121 3. The names and addresses of any chapters, branches or affiliates in this Commonwealth.
- 122 4. The place where and the date when the organization was legally established, the form of its
- 123 organization, and a reference to any determination of its tax-exempt status under the Internal Revenue
- 124 Code.
- 125 5. The names and addresses of the officers, directors, trustees and the principal salaried executive
- 126 staff officer.
- 127 6. A copy of a balance sheet and income and expense statement, with the opinion of any independent
- 128 public accountant, for the organization's immediately preceding fiscal year; a copy of a financial
- 129 statement certified by an independent public accountant covering, in a consolidated report, complete
- 130 information as to all the preceding year's fund-raising activities of the charitable organization, showing
- 131 kind and amount of funds raised, fund-raising expenses and allocation of disbursement of funds raised;
- 132 or a copy of Internal Revenue Service Form 990. The report required by this subdivision shall comply
- 133 with the accounting standards prescribed pursuant to § 57-53. Any organization with gross revenue of
- 134 less than \$25,000 may submit a balance sheet and income and expense statement verified under oath or
- 135 affirmation by the treasurer of the organization.
- 136 7. A statement showing the computation of the percentages provided for in § 57-58.
- 137 8. A statement indicating whether the organization intends to solicit contributions from the public
- 138 directly or have such done on its behalf by others.
- 139 9. A statement indicating whether the organization is authorized by any other governmental authority
- 140 to solicit contributions and whether it, or any officer, professional fund-raiser or professional solicitor
- 141 thereof, is or has ever been enjoined by any court or otherwise prohibited from soliciting contributions
- 142 in any jurisdiction.
- 143 10. The general purpose or purposes for which the contributions to be solicited shall be used.
- 144 11. The name or names under which it intends to solicit contributions.
- 145 12. The names of the individuals or officers of the organization who will have final responsibility for
- 146 the custody of the contributions.
- 147 13. The names of the individuals or officers of the organization responsible for the final distribution
- 148 of the contributions.
- 149 14. A statement indicating whether the organization, or any officer, professional fund-raiser or
- 150 professional solicitor thereof, has ever been convicted of a felony and, if so, a description of the
- 151 pertinent facts.
- 152 15. A copy of the current articles of incorporation, bylaws, or other governing documents. If current
- 153 copies are already on file with the Commissioner, only amendments, if any, shall be filed in years after
- 154 the initial registration.
- 155 16. A description of the types of solicitation to be undertaken.
- 156 B. Each chapter, branch or affiliate, except an independent member agency of a federated
- 157 fund-raising organization, shall separately report the information required by this section or report the
- 158 information to its parent organization which shall then furnish such information as to itself and all of its
- 159 state affiliates, chapters and branches in a consolidated form. All affiliated organizations included in a
- 160 consolidated registration statement shall be considered as one charitable organization for all purposes of
- 161 this chapter. If a consolidated registration statement is filed, all statements thereafter filed shall be upon
- 162 the same basis unless permission to change is granted by the Commissioner.
- 163 C. Each federated fund-raising organization shall report the information required by this section in a
- 164 consolidated form. Any federated fund-raising organization may elect to exclude from its consolidated
- 165 report information relating to the separate fund-raising activities of all of its independent member
- 166 agencies. No member agency of a federated fund-raising organization shall be required to report
- 167 separately any information contained in such a consolidated report. Any separate solicitations campaign
- 168 conducted by, or on behalf of, any such member agency shall nevertheless be subject to all other
- 169 provisions of this chapter.
- 170 D. The registration forms shall be [*verified signed*] ~~under oath or affirmation~~ by the chief fiscal
- 171 officer and by another authorized officer of the charitable organization.
- 172 E. Every charitable organization which submits an independent registration to the Commissioner shall
- 173 pay an annual registration fee of (i) \$30 if its gross contributions for the preceding year do not exceed
- 174 \$25,000; (ii) \$50 if its gross contributions exceed \$25,000 but do not exceed \$50,000; (iii) \$100 if its
- 175 gross contributions exceed \$50,000 but do not exceed \$100,000; (iv) \$200 if its gross contributions
- 176 exceed \$100,000 but do not exceed \$500,000; (v) \$250 if its gross contributions exceed \$500,000 but do
- 177 not exceed \$1 million; and (vi) \$325 if its gross contributions exceed \$1 million. A parent organization
- 178 filing on behalf of one or more chapters, branches or affiliates or a federated fund-raising organization
- 179 filing on behalf of its member agencies shall pay a single annual registration fee for itself and such
- 180 chapters, branches, affiliates or member agencies included in the registration statement. Organizations
- 181 with no prior financial history filing an initial registration shall be required to pay an initial fee of \$100.

182 Organizations with prior financial history filing an initial registration shall be required to pay an initial
183 fee of \$100 in addition to the annual registration fee. Any organization which allows its registration to
184 lapse, without requesting an extension of time to file, shall be required to resubmit an initial registration.
185 An extension may be granted upon receipt of a written request.

186 § 57-55.3. Disclosure regarding financial statement required.

187 Every charitable organization, required to be registered pursuant to § 57-49, and every professional
188 solicitor, required to be registered pursuant to § 57-61, soliciting contributions from prospective
189 contributors, shall disclose to the potential donor contemporaneously at the point of a written request or
190 on a written receipt for donations made in response to an oral request that a financial statement is
191 available from the State ~~Division~~ *Office* of Consumer Affairs in the Department of Agriculture and
192 Consumer Services upon request.

193 § 57-59. Enforcement of chapter; penalties.

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

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

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

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

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

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

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

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

234 E. In any action brought under subsection D, the court may also award to the Commonwealth a civil
235 penalty of not more than \$5,000 per violation, to be paid to the Literary Fund, reasonable expenses
236 incurred by the state or local agency in investigating and preparing the case, not to exceed \$250 per
237 violation, and attorney's fees. Such expenses and attorney's fees shall be paid into the general fund of
238 the Commonwealth or of the county, city, or town which such attorney represented.

239 § 57-60. Exemptions.

240 A. The following persons shall be exempt from the registration requirements of § 57-49 and the
241 requirements of § 57-53, but shall otherwise be subject to the provisions of this chapter:

242 1. Educational institutions that are accredited by the Board of Education, by a regional accrediting
243 association or by an organization affiliated with the National Commission on Accrediting, the

Association Montessori Internationale, the American Montessori Society, the Virginia Independent Schools Association, or the Virginia Association of Independent Schools, any foundation having an established identity with any of the aforementioned educational institutions, and any other educational institution confining its solicitation of contributions to its student body, alumni, faculty and trustees, and their families.

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 use.

3. Charitable organizations that do not intend to solicit and receive, during a calendar year, and have not actually raised or received, during any of the three next preceding calendar years, contributions from the public in excess of \$5,000, if all of their functions, including fund-raising activities, are carried on by persons who are unpaid for their services and if no part of their assets or income inures to the benefit of or is paid to any officer or member. Nevertheless, if the contributions raised from the public, whether all of such are or are not received by any charitable organization during any calendar year, shall be in excess of \$5,000, it shall, within thirty days after the date it has received total contributions in excess of \$5,000, register with and report to the Commissioner as required by this chapter.

4. Organizations that solicit only within the membership of the organization by the members thereof.

5. Organizations that have no office within the Commonwealth, that solicit in the Commonwealth from without the Commonwealth solely by means of telephone or telegraph, direct mail or advertising in national media, and that have a chapter, branch, or affiliate within the Commonwealth that has registered with the Commissioner.

6. Organizations that have been granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and that are organized wholly as Area Health Education Centers in accordance with § 32.1-122.7.

7. Health care institutions defined herein as any facilities that have been granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code, and that are (i) licensed by the Department of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services; (ii) designated by the Health Care Financing Administration (HCFA) as federally qualified health centers; (iii) certified by the HCFA as rural health clinics; or (iv) wholly organized for the delivery of health care services without charge; and any supporting organization that exists solely to support any such health care institutions. For the purposes of clause (iv), "delivery of health care services without charge" includes the delivery of dental, medical or other health services where a reasonable minimum fee is charged to cover administrative costs.

8. Civic organizations as defined herein.

9. Nonprofit debt counseling agencies licensed pursuant to § 6.1-363.1.

10. Agencies designated by the Virginia Department for the Aging pursuant to subdivision A 6 of § 2.2-703 as area agencies on aging.

11. Labor unions, labor associations and labor organizations that have been granted tax-exempt status under § 501 (c) (5) of the Internal Revenue Code.

12. Trade associations that have been granted tax-exempt status under § 501 (c) (6) of the Internal Revenue Code.

~~[13. Commercial coventurers as defined herein.]~~

B. A charitable organization shall be subject to the provisions of §§ 57-57 and 57-59, but shall otherwise be exempt from the provisions of this chapter for any year in which it confines its solicitations in the Commonwealth to five or fewer contiguous cities and counties, and in which it has registered under the charitable solicitations ordinance, if any, of each such city and county. No organization shall be exempt under this subsection if, during its next preceding fiscal year, more than ten percent of its gross receipts were paid to any person or combination of persons, located outside the boundaries of such cities and counties, other than for the purchase of real property, or tangible personal property or personal services to be used within such localities. An organization that is otherwise qualified for exemption under this subsection that solicits by means of a local publication, or radio or television station, shall not be disqualified solely because the circulation or range of such medium extends beyond the boundaries of such cities or counties.

C. No charitable or civic organization shall be exempt under this section unless it submits to the Commissioner, who in his discretion may extend such filing deadline prospectively or retrospectively for good cause shown, on forms to be prescribed by him, the name, address and purpose of the organization and a statement setting forth the reason for the claim for exemption. Parent organizations may file consolidated applications for exemptions for any chapters, branches, or affiliates that they believe to be exempt from the registration provisions of this chapter. If the organization is exempted, the Commissioner shall issue a letter of exemption, which may be exhibited to the public. A registration fee of ten dollars shall be required of every organization requesting an exemption after June 30, 1984. The letter of exemption shall remain in effect as long as the organization continues to solicit in accordance

305 with its claim for exemption.

306 D. Nothing in this chapter shall be construed as being applicable to the American Red Cross or any
307 of its local chapters.

308 § 57-61.2. *Commercial co-ventures.*

309 A. *No commercial coventurer shall conduct any charitable sales promotion in the Commonwealth on*
310 *behalf of a charitable or civic organization unless the charitable or civic organization is duly registered*
311 *or granted the appropriate exempt status as provided by this chapter.*

312 B. *Prior to any charitable sales promotion in the Commonwealth, the commercial coventurer shall*
313 *have a written agreement with the charitable or civic organization on whose behalf the charitable sales*
314 *promotion is to be conducted. Such agreement shall be signed by an authorized representative of the*
315 *commercial coventurer and 2 officers of the charitable or civic organization.*

316 C. *The commercial coventurer shall maintain all records in connection with the charitable sales*
317 *promotion for a period of 3 years after the end date of the charitable sales promotion. All such records*
318 *shall be made available to the Commissioner upon request.*