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HOUSE BILL NO. 1748

Offered January 11, 2023

Prefiled January 9, 2023

A BILL to amend and reenact §§ 57-48, 57-51, 57-52, 57-52.1, 57-54, 57-55.2, and 57-60 of the Code of Virginia, relating to solicitation of contributions; professional solicitors; definition of "solicitation"; terms of contracts.

Patrons—Willett, Helmer and Kory

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 57-48, 57-51, 57-52, 57-52.1, 57-54, 57-55.2, and 57-60 of the Code of Virginia are amended and reenacted 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.

"Charitable organization" means any person that is or holds itself out to be organized or operated for any charitable purpose, or any person that solicits or obtains contributions solicited from the public. "Charitable organization" does not 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 that state that the purchase or use of the goods, services, entertainment, or any other thing of value that the commercial co-venturer 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 co-venturer 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 group, or local civic league or association of 10 or more persons not organized for profit but operated exclusively for educational or charitable purposes as defined in this section, including the promotion of community welfare, and the net earnings of which are devoted exclusively to charitable, educational, recreational, or social welfare purposes.

"Commercial co-venturer" 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.

"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.

"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. "Contribution" does not include any donation of blood or any gift made pursuant to Article 2 (§ 32.1-291.1 et seq.) of Chapter 8 of Title 32.1.

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

"Federated fund-raising organization" means any federation of independent charitable organizations that 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.

"File with the Commissioner" means depositing the originals of the documents required to be filed,

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59 along with the payment of the appropriate fee and all supporting documents with the Department or
60 submitting the required documents and any appropriate attachments and fees by utilizing an online filing
61 system approved by the Commissioner.

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

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

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

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

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

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

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

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

97 1. Any oral or written request;

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

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

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

109 "Solicitation," as defined in this section, shall be deemed to occur when the request is made, at the
110 place the request is received, whether or not the person making the same actually receives any
111 contribution.

112 "Terrorists and terrorist organizations" means any person, organization, group, or conspiracy who
113 assists or has assisted terrorist organizations, as provided in 18 U.S.C. § 2339B, or who commits or
114 attempts to commit acts of terrorism, as defined in § 18.2-46.4.

115 **§ 57-51. Nonresident registration.**

116 (a) A. Any unregistered charitable organization, professional fund-raising counsel, or professional
117 solicitor, having his or its principal place of business ~~without this~~ outside of the Commonwealth or
118 organized under and by virtue of the laws of a foreign state who or which shall solicit contributions
119 from people in ~~this the~~ Commonwealth, shall be deemed to have irrevocably appointed the Secretary of
120 the Commonwealth as his or its agent upon whom may be served any summons, subpoena, subpoena

duces tecum, or other process directed to such charitable organization, or any partner, principal, officer, or director thereof or to such professional fund-raising counsel or professional solicitor. Service shall be made by leaving two copies of the process, notice, order, or demand, together with any fee required by law, in the office of the Secretary of the Commonwealth, together with an affidavit giving the last known post-office address of the defendant and such service shall be sufficient if notice of such service and a copy of the process, notice, order, or demand are forthwith sent by registered mail, with return receipt requested, by the Secretary of the Commonwealth or one of his staff to the defendant at the specified address. An affidavit by the Secretary of the Commonwealth showing compliance herewith shall be filed with the papers in the suit, action, or proceeding.

(b) B. Any charitable organization, having no office or place of business within ~~this the~~ Commonwealth and soliciting in ~~this the~~ Commonwealth from ~~without~~ outside of the Commonwealth solely by *email or the Internet*, telephone or telegraph, direct mail, or advertising in national media, and any professional fund-raising counsel or professional solicitor engaged by such an organization, shall file with the Commissioner any report ~~which that~~ would otherwise be required of it or request the Commissioner to determine that such organization is exempt under § 57-50 or § 57-60.

§ 57-52. Publication of warnings concerning certain charitable and civic organizations.

If the Commissioner determines that any charitable or civic organization not registered with his office and not exempt from registration, irrespective of whether such organization is subject to the jurisdiction of ~~this the~~ Commonwealth, has solicited or may be soliciting in ~~this the~~ Commonwealth, directly or indirectly, by any means including without limitation, by *email or the Internet*, by telephone or telegraph, by direct mail, or by advertising in national media, he may, after ~~ten~~ 10 days' written notice mailed to the charitable or civic organization, cause to be printed *on the Department's website and* in one or more newspapers published in ~~this the~~ Commonwealth a notice in substantially the following form:

WARNING—UNREGISTERED CHARITABLE SOLICITATION

The organization named below has solicited contributions from Virginia citizens for allegedly charitable purposes. It has not registered with or been granted the appropriate exempt status by the Commissioner as required by law. Contributors are cautioned that their contributions to such organization may be used for noncharitable purposes.

§ 57-52.1. Publication of warnings concerning solicitation by professional solicitors.

If the Commissioner determines that any charitable or civic organization has contracted with a professional solicitor to solicit on its behalf and that the professional solicitor may be soliciting or has solicited in ~~this the~~ Commonwealth, directly or indirectly, by any means, including, without limitation, by *email or the Internet*, by telephone or telegraph, by direct mail, or by advertising in national media, and the professional solicitor has not registered with the Commissioner as required by § 57-61, the Commissioner may, after five days' written notice mailed to the charitable or civic organization, cause to be printed *on the Department's website and* in one or more newspapers published in ~~this the~~ Commonwealth a notice on substantially the following form:

WARNING—UNREGISTERED CHARITABLE SOLICITATION BY PROFESSIONAL SOLICITOR

The charitable or civic organization named below has contracted with a professional solicitor to solicit on its behalf. The professional solicitor has not registered with the Commonwealth of Virginia as required by law. Contributors are cautioned that their contributions may be used for noncharitable purposes.

§ 57-54. Contracts between charitable or civic organizations and professional fund-raising counsel or professional solicitors.

A. Every contract or agreement between professional fund-raising counsel and a charitable or civic organization ~~must~~ shall be in writing and shall be filed with the Commissioner within ~~ten~~ 10 days after such contract or written agreement is entered into.

B. Every contract, or a written statement of the nature of the arrangement to prevail in the absence of a contract, between a professional solicitor and a charitable or civic organization shall be filed with the Commissioner at least ~~ten~~ 10 days prior to commencement of the contract.

C. All agreements and arrangements between professional fund-raising counsel and charitable or civic organizations ~~must~~ shall be reduced to writing before executed or acted upon.

D. Any contract between a professional solicitor and a charitable or civic organization shall specify the percentage of gross contributions that the charitable or civic organization will receive or the terms upon which a determination can be made as to the amount of the gross revenue from the solicitation campaign that the charitable or civic organization will receive. If a reasonable estimate is used to make such determination, the contract shall clearly disclose the assumptions or the formula upon which the estimate is based; however, if a fixed percentage is used, such percentage shall exclude any amount that the charitable or civic organization is to pay as an expense of the solicitation campaign, including the

182 *cost of any merchandise or services sold. The professional solicitor shall, at the conclusion of a*
183 *charitable appeal, provide to the charitable or civic organization a final accounting of all expenditures.*
184 *Such final accounting may not be used in violation of any state or federal trade secret laws. The*
185 *contract shall disclose the average percentage of gross contributions collected on behalf of charitable or*
186 *civic organizations that such organizations received from the professional solicitor for the three years*
187 *preceding the year in which the contract was formed. The contract shall also specify that at least every*
188 *90 days the professional solicitor shall provide the charitable or civic organization with access to and*
189 *use of all information in the professional solicitor's possession concerning contributors, including the*
190 *name, mailing address, email address, and telephone number of each contributor and the date and*
191 *amount of each contribution. A professional solicitor shall not restrict a charitable or civic*
192 *organization's use of any such contributor information.*

193 **§ 57-55.2. Charitable solicitation disclosure.**

194 Every professional solicitor who solicits contributions from a prospective contributor in the
195 Commonwealth: (i) shall identify himself and his employer; (ii) shall disclose that he is a paid solicitor;
196 ~~and~~ (iii) shall further disclose, in writing, the fact that a financial statement for the last fiscal year is
197 available from the Department of Agriculture and Consumer Services; *and (iv) shall disclose the*
198 *percentage of the charitable contribution that will be expended for charitable purposes after*
199 *administrative costs and the cost of making the solicitation have been satisfied.*

200 **§ 57-60. Exemptions.**

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

203 1. Educational institutions that are accredited by the Board of Education, by a regional accrediting
204 association or by an organization affiliated with the National Commission on Accrediting, the
205 Association Montessori Internationale, the American Montessori Society, the Virginia Independent
206 Schools Association, or the Virginia Association of Independent Schools, any foundation having an
207 established identity with any of the aforementioned educational institutions, and any other educational
208 institution confining its solicitation of contributions to its student body, alumni, faculty and trustees, and
209 their families.

210 2. Persons requesting contributions for the relief of any individual specified by name at the time of
211 the solicitation when all of the contributions collected without any deductions whatsoever are turned
212 over to the named beneficiary for his use.

213 3. Charitable organizations that do not intend to solicit and receive, during a calendar year, and have
214 not actually raised or received, during any of the three next preceding calendar years, contributions from
215 the public in excess of \$5,000, if all of their functions, including fund-raising activities, are carried on
216 by persons who are unpaid for their services and if no part of their assets or income inures to the
217 benefit of or is paid to any officer or member. Nevertheless, if the contributions raised from the public,
218 whether all of such are or are not received by any charitable organization during any calendar year, shall
219 be in excess of \$5,000, it shall, within 30 days after the date it has received total contributions in excess
220 of \$5,000, register with and report to the Commissioner as required by this chapter.

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

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

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

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

237 8. Civic organizations as defined herein.

238 9. Agencies providing or offering to provide debt management plans for consumers that are licensed
239 pursuant to Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2.

240 10. Agencies designated by the Virginia Department for Aging and Rehabilitative Services pursuant
241 to subdivision A 6 of § 51.5-135 as area agencies on aging.

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

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

246 13. Organizations that have been granted tax-exempt status under § 501(c)(3) of the Internal Revenue
247 Code and that are organized wholly as regional emergency medical services councils in accordance with
248 § 32.1-111.4:2.

249 14. Nonprofit organizations that have been granted tax-exempt status under § 501(c)(3) of the Internal
250 Revenue Code and that solicit contributions only through (i) grant proposals submitted to for-profit
251 corporations, (ii) grant proposals submitted to other nonprofit organizations that have been granted
252 tax-exempt status under § 501(c)(3) of the Internal Revenue Code, or (iii) grant proposals submitted to
253 organizations determined to be private foundations under § 509(a) of the Internal Revenue Code.

254 B. A charitable organization shall be subject to the provisions of §§ 57-57 and 57-59, but shall
255 otherwise be exempt from the provisions of this chapter for any year in which it confines its
256 solicitations in the Commonwealth to five or fewer contiguous cities and counties, and in which it has
257 registered under the charitable solicitations ordinance, if any, of each such city and county. No
258 organization shall be exempt under this subsection if, during its next preceding fiscal year, more than 10
259 percent of its gross receipts were paid to any person or combination of persons, located outside the
260 boundaries of such cities and counties, other than for the purchase of real property, or tangible personal
261 property or personal services to be used within such localities. An organization that is otherwise
262 qualified for exemption under this subsection that solicits by means of a local publication, or radio or
263 television station, shall not be disqualified solely because the circulation or range of such medium
264 extends beyond the boundaries of such cities or counties.

265 C. No charitable or civic organization shall be exempt under this section unless it submits to the
266 Commissioner, who in his discretion may extend such filing deadline prospectively or retrospectively for
267 good cause shown, on forms to be prescribed by him, the name, address and purpose of the organization
268 and a statement setting forth the reason for the claim for exemption. Parent organizations may file
269 consolidated applications for exemptions for any chapters, branches, or affiliates that they believe to be
270 exempt from the registration provisions of this chapter. If the organization is exempted, the
271 Commissioner shall issue a letter of exemption, which may be exhibited to the public. A registration fee
272 of \$10 shall be required of every organization requesting an exemption after June 30, 1984. The letter of
273 exemption shall remain in effect as long as the organization continues to solicit in accordance with its
274 claim for exemption.

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