

# VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

## CHAPTER 461

*An Act to amend and reenact §§ 57-48, 57-60 and 57-61 of the Code of Virginia, relating to solicitation of contributions.*

[H 1549]

Approved March 31, 1996

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 57-48, 57-60 and 57-61 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.

"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; ~~(iii) any labor union registered under § 40.1-76 nor any trade association;~~ or ~~(iv)~~ (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.

"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 indirectly, in connection with soliciting contributions for, or on behalf of, any charitable or civic organization, but who actually solicits no contributions as a part of such services. A bona fide salaried officer or employee of a registered or exempt charitable organization or the bona fide salaried officer or

employee of a registered parent organization shall not be deemed to be a professional fund-raising counsel.

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

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

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

1. Any oral or written request;
2. Any announcement to the press, over the radio or television, or by telephone or telegraph concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith;
3. 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
4. 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 any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will be donated to any charitable purpose.

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

#### § 57-60. Exemptions.

(a) The following persons shall be exempt from the registration requirements of § 57-49 and the requirements of § 57-53, but shall otherwise be subject to the provisions of this chapter:

(1) Educational institutions that are accredited by the Board of Education, by a regional accrediting association or by an organization affiliated with the National Commission on Accrediting, the Association Montessori Internationale, the American Montessori Society, 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 which 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 is or is 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 which solicit only within the membership of the organization by the members thereof.

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

(6) Health care institutions which have been granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and any supporting organization which exists solely to support any such health care institutions.

(7) Civic organizations as defined herein.

(8) Nonprofit debt counseling agencies licensed pursuant to § 6.1-363.1.

(9) Agencies designated by the Virginia Department for the Aging pursuant to subdivision (a) (7) of

§ 2.1-373 as area agencies on aging.

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

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

(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 this 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 which is otherwise qualified for exemption under this subsection which 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 which 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 with its claim for exemption.

(d) Nothing in this chapter shall be construed as being applicable to the American Red Cross or any of its local chapters.

§ 57-61. Registration of professional fund-raising counsels and solicitors.

A. No person shall act as a professional fund-raising counsel or professional solicitor for a charitable or civic organization, unless he has first registered with the Commissioner. Applications for registration shall be in writing under oath or affirmation in the form prescribed by the Commissioner and contain such information as he may require. The application shall be accompanied by an annual fee of \$100 for the professional fund-raising counsel. The fee for a professional solicitor shall be \$500. Any professional solicitor who fails to register prior to any solicitation shall be required to pay a late filing fee of \$250. It shall be the responsibility of the professional solicitor to file with the Commissioner, within ninety days after completion of a solicitation campaign, a report showing all funds collected and such other information as the Commissioner may require. A partnership or corporation which is a professional fund-raising counsel or professional solicitor, may register for and pay a single fee on behalf of all its members, officers, agents and employees.

B. Each professional solicitor shall, at the time of making application, file with and have approved by the Commissioner a bond in which the applicant shall be the principal obligor in the sum of \$20,000 with one or more sureties satisfactory to the Commissioner, whose liability in the aggregate as such sureties will at least equal \$20,000, and maintain the bond in effect so long as registration is in effect. The bond shall run to the Commonwealth of Virginia for the use of the bonds in reimbursement for any penalties or losses resulting from malfeasance, nonfeasance or misfeasance in the conduct of solicitation activities. A partnership or corporation which is a professional solicitor may file a consolidated bond on behalf of all its members, officers, agents and employees.

C. Each registration shall be valid throughout the Commonwealth of Virginia for a period of one year from the date of issue and may be renewed for additional one-year periods upon written application, under oath or affirmation, in the form prescribed by the Commissioner and the payment of the fee prescribed herein.

D. At least ten days prior to the commencement of each solicitation campaign, the solicitor shall file with the Commissioner a copy of the contract entered into with any charitable or civic organization and shall file a completed "Solicitation Notice" on forms prescribed by the Commissioner. The Solicitation Notice shall be in writing and under oath, and shall include a description of the solicitation event or campaign, the projected starting and ending dates of the campaign, and the location and telephone number from which the solicitation will be conducted. ~~Copies of all campaign solicitation literature shall be attached to the Solicitation Notice.~~ The charitable or civic organization on whose behalf the solicitor is acting shall certify that the Solicitation Notice and accompanying material are true and complete.

E. The solicitor shall maintain during each solicitation campaign and for not less than three years after its completion, the following records: (i) the name and address of each contributor and the date and amount of the contribution, provided that the Commissioner shall not disclose this information except to the extent necessary for investigative or law-enforcement purposes; (ii) the name and residence address

of each employee, agent, or other person involved in the solicitation; (iii) records of all expenses incurred in the course of the solicitation campaign; and (iv) the account number and location of all bank accounts where receipts from the campaign will be deposited.

F. All funds collected by the solicitor shall be deposited in a bank account. The bank account shall include the name of the charitable or civic organization with whom the solicitor has contracted. The professional solicitor shall promptly provide to the charitable or civic organization a copy of all monthly bank statements.

G. Any change in information filed with the Commissioner pursuant to this section shall be reported in writing to the Commissioner within seven days after the change occurs.

**2. That an emergency exists and this act is in force from its passage.**