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## HOUSE BILL NO. 1269

Offered January 26, 1998

A *BILL* to amend and reenact §§ 57-48, 57-60 and 57-63 of the Code of Virginia, relating to solicitation of contributions; exemptions.

Patrons—Crittenden, Barlow, Christian, Hall, Jones, D.C., Jones, J.C., Keating, McEachin, Robinson, Spruill and Van Landingham; Senators: Lambert, Maxwell and Miller, Y.B.

Referred to Committee on Corporations, Insurance and Banking

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

**1. That §§ 57-48, 57-60 and 57-63 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; 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.

"Health care institution" means any medical facility exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and (i) licensed by the State Department of Health or the State Department of Mental Health, Mental Retardation and Substance Abuse Services or (ii) designated by the Health Care Financing Administration as a Federally Qualified Health Center or a Rural Health Clinic.

"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.

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

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

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

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

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

85 1. Any oral or written request;

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

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

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

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

99 § 57-60. Exemptions.

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

102 (4) 1. Educational institutions that are accredited by the Board of Education, by a regional  
103 accrediting association or by an organization affiliated with the National Commission on Accrediting, the  
104 Association Montessori Internationale, the American Montessori Society, the Virginia Independent  
105 Schools Association, or the Virginia Association of Independent Schools, any foundation having an  
106 established identity with any of the aforementioned educational institutions, and any other educational  
107 institution confining its solicitation of contributions to its student body, alumni, faculty and trustees, and  
108 their families.

109 (2) 2. Persons requesting contributions for the relief of any individual specified by name at the time  
110 of the solicitation when all of the contributions collected without any deductions whatsoever are turned  
111 over to the named beneficiary for his use.

112 (3) 3. Charitable organizations which do not intend to solicit and receive, during a calendar year, and  
113 have not actually raised or received, during any of the three next preceding calendar years, contributions  
114 from the public in excess of \$5,000, if all of their functions, including fund-raising activities, are carried  
115 on by persons who are unpaid for their services and if no part of their assets or income inures to the  
116 benefit of or is paid to any officer or member. Nevertheless, if the contributions raised from the public,  
117 whether all of such is or is not received by any charitable organization during any calendar year, shall  
118 be in excess of \$5,000, it shall, within thirty days after the date it has received total contributions in  
119 excess of \$5,000, register with and report to the Commissioner as required by this chapter.

120 (4) 4. Organizations which solicit only within the membership of the organization by the members  
121 thereof.

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

(7) 7. Civic organizations as defined herein.

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

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

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

§ 57-63. Local ordinances.

(a) A. The governing body of any city, town or county may by ordinance not inconsistent with this chapter provide for the regulation and licensing of charitable or civic organizations soliciting within the city, town or county, and for penalties for violation thereof, subject to the following limitations:

(1) 1. No local license tax or fee in excess of ten dollars shall be required of any charitable organization.

(2) 2. No charitable organization exempt from registration under subsection A 1, A 4, or A 6 of § 57-60 (a) (1) or (4) or (6) shall be required to be licensed. Any such organization may obtain a local license, without payment of any license tax or fee, upon compliance with all such requirements of the local ordinance as would have been applicable had it been registered with the Commissioner during each year in which it obtained an exemption letter under subsection C of § 57-60 (c).

(3) 3. No charitable organization which has registered with the Commissioner for the current and next preceding three years, or exempt for such years under § 57-50, shall be required to provide any financial information.

(4) 4. No charitable or civic organization which solicits within this the Commonwealth from a place outside the Commonwealth solely by telephone, telegraph, direct mail or advertising in national media, and having no chapter, branch, area or office within this the Commonwealth, shall be required to be licensed.

(5) 5. No museum which has registered with the Commissioner as required by § 57-49 and which has been granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code shall be required to comply with the regulation or licensing provisions of any local charitable solicitations ordinance.

(6) 6. If a charitable or civic organization shall designate by power of attorney filed with the Commissioner one or more persons authorized to sign on its behalf, the signature, verification or

183 affirmation of any such persons shall be sufficient for all purposes of any local charitable solicitations  
184 ordinance.

185 ~~(b)~~ B. Any ordinance adopted pursuant to this section may provide, inter alia, for procedures  
186 whereby charitable organizations may, for valid reasons, after an administrative hearing, be denied a  
187 local license or whereby a license may be revoked. Valid reasons for denial or revocation of a local  
188 license may be defined to include, without limitation, the expenditure of charitable assets for  
189 noncharitable purposes, any misrepresentation to the public or to any prospective donor, and any  
190 violation of state or local law. Any charitable organization which is denied a license may, within fifteen  
191 days from the date of such denial, apply for relief to the circuit court of such city or county or of the  
192 county in which such town is located. If the court is satisfied that the denial was for any reason  
193 erroneous, it shall provide such relief as may be appropriate.

194 ~~(c)~~ C. No ordinance, or amendment thereto, adopted pursuant to this section shall be valid for any  
195 calendar year beginning after December 31, 1978, unless, before September 1 of that year, there shall  
196 have been filed with the Commissioner, on forms to be prescribed by him, information deemed by him  
197 to be sufficient for the purpose of advising charitable or civic organizations of the necessity for them to  
198 be licensed by such city, town or county.

199 ~~(d)~~ D. No charitable organization shall be required to comply with the provisions of local ordinances  
200 if such organization has registered with the Commissioner or if such organization is a chapter, branch or  
201 affiliate included in the consolidated report of an organization or federated organization registered with  
202 the Commissioner, except that such charitable organization shall not be exempted from that portion of  
203 any local ordinance which requires such organization to register its name, the names of its solicitors and  
204 the dates and times that they will be soliciting in the locality.