

# VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

## CHAPTER 329

*An Act to amend and reenact §§ 57-48, 57-49, and 57-50 of the Code of Virginia, relating to solicitation of contributions; filing online registrations.*

[H 2871]

Approved March 20, 2005

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

**1. That §§ 57-48, 57-49, and 57-50 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 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 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 groups, 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 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 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.

"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.

*"File with the Commissioner" means depositing the originals of the documents required to be filed, along with the payment of the appropriate fee and all supporting documents with the Office of Consumer Affairs, or submitting the required documents and any appropriate attachments and fees by utilizing an online filing system approved by the Commissioner.*

"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.

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

#### § 57-49. Registration of charitable organizations; prohibition against support of terrorists.

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

1. The name of the organization and the purpose for which it was organized.
2. The principal address of the organization, the address of any offices in ~~this~~ the Commonwealth and its designated agent for process within the Commonwealth. If no such agent is designated, the organization shall be deemed to have designated the Secretary of the Commonwealth. If the organization does not maintain an office, the name and address of the person having custody of its financial records.

3. The names and addresses of any chapters, branches or affiliates in ~~this~~ *the* Commonwealth.
4. The place where and the date when the organization was legally established, the form of its organization, and a reference to any determination of its tax-exempt status under the Internal Revenue Code.
5. The names and addresses of the officers, directors, trustees and the principal salaried executive staff officer.
6. A copy of a balance sheet and income and expense statement, with the opinion of any independent public accountant, for the organization's immediately preceding fiscal year; a copy of a financial statement certified by an independent public accountant covering, in a consolidated report, complete information as to all the preceding year's fund-raising activities of the charitable organization, showing kind and amount of funds raised, fund-raising expenses and allocation of disbursement of funds raised; or a copy of Internal Revenue Service Form 990. The report required by this subdivision shall comply with the accounting standards prescribed pursuant to § 57-53. Any organization with gross revenue of less than \$25,000 may submit a balance sheet and income and expense statement verified under oath or affirmation by the treasurer of the organization.
7. A statement showing the computation of the percentages provided for in § 57-58.
8. A statement indicating whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others.
9. A statement indicating whether the organization is authorized by any other governmental authority to solicit contributions and whether it, or any officer, professional fund-raiser or professional solicitor thereof, is or has ever been enjoined by any court or otherwise prohibited from soliciting contributions in any jurisdiction.
10. The general purpose or purposes for which the contributions to be solicited shall be used.
11. The name or names under which it intends to solicit contributions.
12. The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions.
13. The names of the individuals or officers of the organization responsible for the final distribution of the contributions.
14. A statement indicating whether the organization, or any officer, professional fund-raiser or professional solicitor thereof, has ever been convicted of a felony and, if so, a description of the pertinent facts.
15. A copy of the current articles of incorporation, bylaws, or other governing documents. If current copies are already on file with the Commissioner, only amendments, if any, shall be filed in years after the initial registration.
16. A description of the types of solicitation to be undertaken.
  - A1. Every registration statement shall include the following language:

"No funds have been or will knowingly be used, directly or indirectly, to benefit or provide support, in cash or in kind, to terrorists, terrorist organizations, terrorist activities, or the family members of any terrorist."
  - A2. No person shall be registered by the Commonwealth or by any locality to solicit funds that are intended to benefit or support terrorists, terrorist organizations or terrorist activities. No person shall be registered by the Commonwealth or by any locality to solicit funds that are intended to benefit or support a family member of any terrorist, unless a court of competent jurisdiction within the Commonwealth, upon petition of an interested person, finds by clear and convincing evidence that, for a period of at least three years next preceding any act of terrorism committed by such terrorist or terrorist organization, the family members to whom the benefit of the contributions shall inure have been living separate and apart from the terrorist or terrorist organization, and the family members have not provided any financial support, in cash or in kind, to the terrorist or terrorist organization for the same period of time.
  - B. Each chapter, branch or affiliate, except an independent member agency of a federated fund-raising organization, shall separately report the information required by this section or report the information to its parent organization which shall then furnish such information as to itself and all of its state affiliates, chapters and branches in a consolidated form. All affiliated organizations included in a consolidated registration statement shall be considered as one charitable organization for all purposes of this chapter. If a consolidated registration statement is filed, all statements thereafter filed shall be upon the same basis unless permission to change is granted by the Commissioner.
  - C. Each federated fund-raising organization shall report the information required by this section in a consolidated form. Any federated fund-raising organization may elect to exclude from its consolidated report information relating to the separate fund-raising activities of all of its independent member agencies. No member agency of a federated fund-raising organization shall be required to report separately any information contained in such a consolidated report. Any separate solicitations campaign conducted by, or on behalf of, any such member agency shall nevertheless be subject to all other provisions of this chapter.
  - D. The registration forms shall be signed by the chief fiscal officer and by another authorized officer

of the charitable organization. *If the registration forms are filed online using a website approved by the Commissioner, the charitable organization shall follow the procedures on that website for signing the forms.*

E. Every charitable organization which submits an independent registration to the Commissioner shall pay an annual registration fee of (i) \$30 if its gross contributions for the preceding year do not exceed \$25,000; (ii) \$50 if its gross contributions exceed \$25,000 but do not exceed \$50,000; (iii) \$100 if its gross contributions exceed \$50,000 but do not exceed \$100,000; (iv) \$200 if its gross contributions exceed \$100,000 but do not exceed \$500,000; (v) \$250 if its gross contributions exceed \$500,000 but do not exceed \$1 million; and (vi) \$325 if its gross contributions exceed \$1 million. A parent organization filing on behalf of one or more chapters, branches or affiliates or a federated fund-raising organization filing on behalf of its member agencies shall pay a single annual registration fee for itself and such chapters, branches, affiliates or member agencies included in the registration statement. Organizations with no prior financial history filing an initial registration shall be required to pay an initial fee of \$100. Organizations with prior financial history filing an initial registration shall be required to pay an initial fee of \$100 in addition to the annual registration fee. Any organization which allows its registration to lapse, without requesting an extension of time to file, shall be required to resubmit an initial registration. An extension may be granted upon receipt of a written request.

§ 57-50. Reciprocal agreements with other states; online filing.

A. The Commissioner may enter into a reciprocal agreement with the appropriate authority of any other state for the purpose of exchanging information with respect to charitable organizations, professional fund-raising counsel and professional solicitors. Pursuant to such agreements, the Commissioner may accept information filed by a charitable organization, professional fund-raising counsel and professional solicitor with the appropriate authority of another state in lieu of the information required to be filed in accordance with the provisions of this chapter, if such information is substantially similar to the information required under this chapter. The Commissioner may also grant exemption from the requirement for the filing of [an] annual registration statement with him to charitable organizations organized under the laws of another state, having their principal place of business in such other state, having funds derived principally from sources outside ~~this~~ the Commonwealth, and having been granted exemption from the filing of registration statements by such other state, if such state has a statute similar in substance to the provisions of this chapter and participates in a reciprocal agreement pursuant to this section.

B. *The Commissioner may also enter into a memorandum of understanding or other similar agreement with the appropriate authority of any other state or federal agency for the purpose of providing charitable organizations, professional fund-raising counsel or professional solicitors with the option of filing their annual registration statements online on a website approved by all states that are parties to the memorandum of understanding. The Commissioner may accept such online filing in lieu of the information required to be filed in accordance with the provisions of this chapter if the procedures for online filing provide for submitting substantially similar information to that required by this chapter. The information provided by charitable organizations, professional fund-raising counsel or professional solicitors at the approved website as a result of their completion of the online registration statement shall be shared with the appropriate authority of any state or federal agency that is a party to the memorandum of understanding.*