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HOUSE BILL NO. 1365

Offered January 22, 2004

A BILL to amend and reenact § 57-48 of the Code of Virginia, relating to solicitation of contributions; definition of charitable organization.

Patron—Petersen

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 57-48 of the Code of Virginia is 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; or (iv) *any nonprofit organization submitting grant proposals to specifically targeted corporations or foundations, and not to the general public, for funding for study or research on medical, rehabilitative, scientific, technical or scholarly issues produced or collected by such 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.

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