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HOUSE BILL NO. 1748

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on January 31, 2023)

(Patron Prior to Substitute—Delegate Willett)

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

Be it enacted by the General Assembly of Virginia:

1. That §§ 57-48, 57-51, 57-52, 57-52.1, 57-54, 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, along with the payment of the appropriate fee and all supporting documents with the Department or submitting the required documents and any appropriate attachments and fees by utilizing an online filing system approved by the Commissioner.

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

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

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

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

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

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

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

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

95 1. Any oral or written request;

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

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

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

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

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

113 **§ 57-51. Nonresident registration.**

114 (a) A. Any unregistered charitable organization, professional fund-raising counsel, or professional
115 solicitor, having his or its principal place of business ~~without this~~ outside of the Commonwealth or
116 organized under and by virtue of the laws of a foreign state who or which shall solicit contributions
117 from people in ~~this~~ the Commonwealth, shall be deemed to have irrevocably appointed the Secretary of
118 the Commonwealth as his or its agent upon whom may be served any summons, subpoena, subpoena
119 duces tecum, or other process directed to such charitable organization, or any partner, principal, officer,
120 or director thereof or to such professional fund-raising counsel or professional solicitor. Service shall be
121 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*, 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*, 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*, 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 cost of any merchandise or services sold. The professional solicitor shall, at the conclusion of a charitable appeal, provide to the charitable or civic organization a final accounting of all expenditures. Such final accounting may not be used in violation of any state or federal trade secret laws. The contract shall disclose the average percentage of gross contributions collected on behalf of charitable or

183 *civic organizations that such organizations received from the professional solicitor for the three years*
184 *preceding the year in which the contract was formed. The contract shall also specify that at least every*
185 *90 days the professional solicitor shall provide the charitable or civic organization with access to and*
186 *use of all information in the professional solicitor's possession concerning contributors, including the*
187 *name, mailing address, email address, and telephone number of each contributor and the date and*
188 *amount of each contribution. A professional solicitor shall not restrict a charitable or civic*
189 *organization's use of any such contributor information.*

190 **§ 57-60. Exemptions.**

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

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

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

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

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

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

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

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

227 8. Civic organizations as defined herein.

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

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

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

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

236 13. Organizations that have been granted tax-exempt status under § 501(c)(3) of the Internal Revenue
237 Code and that are organized wholly as regional emergency medical services councils in accordance with
238 § 32.1-111.4:2.

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

244 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 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 10 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 that is otherwise qualified for exemption under this subsection that 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 that 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 \$10 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.