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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



ENROLLED

House Bill No. 4413

(By Delegates Fleischauer, Compton,
C. White, Manuel, Fragale and Beach)



Passed March 8, 2002

In Effect Ninety Days from Passage

ENROLLED

H. B. 4413

(BY DELEGATES FLEISCHAUER, COMPTON,
C. WHITE, MANUEL, FRAGALE AND BEACH)

[Passed March 8, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact sections five and six, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to charitable organizations generally, increasing contribution levels for certain charities eligible for exemption from being required to file annual registration statements; excluding certain charitable organizations that do not employ professional fund-raisers or receive public contributions from annual audit requirements; increasing the threshold before an independent audit is required; making technical changes relating to exemptions for charities that are an integral part of a church; and broadening types of charities eligible for certain exceptions.

Be it enacted by the Legislature of West Virginia:

That sections five and six, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-5. Registration of charitable organizations; fee.

1 (a) Every charitable organization, except as provided in
2 section six of this article, which intends to solicit contributions
3 within this state or to have funds solicited on its behalf shall,
4 prior to any solicitation, file a registration statement with the
5 secretary of state upon forms prescribed by him or her which
6 shall be good for one full year and which shall be refiled in the
7 next and each following year in which the charitable organiza-
8 tion is engaged in solicitation activities. If an organization
9 discontinues solicitation at any time after its last registration
10 filing, then it shall file a registration statement reflecting its
11 activities during its last fiscal year in which solicitation in West
12 Virginia took place. It is the duty of the president, chairman or
13 principal officer of the charitable organization to file the
14 statements required under this article. The statements shall be
15 sworn to and shall contain the following information:

16 (1) The name of the organization and the purpose for which
17 it was organized;

18 (2) The principal address of the organization and the
19 address of any offices in this state. If the organization does not
20 maintain an office, the name and address of the person having
21 custody of its financial records;

22 (3) The names and addresses of any chapters, branches or
23 affiliates in this state;

24 (4) The place where and the date when the organization was
25 legally established and the form of its organization;

26 (5) The names and addresses of the officers, directors,
27 trustees and the principal salaried executive staff officer;

28 (6) A copy of a balance sheet and a statement or report of
29 income and expenses for the organization's immediately
30 preceding fiscal year or a financial statement reporting informa-
31 tion showing the kind and amount of funds raised during the
32 preceding fiscal year, the costs and expenses incidental to the
33 fund raising and showing how the funds were disbursed or
34 allocated for the same fiscal year: *Provided*, That for organiza-
35 tions raising more than one hundred thousand dollars per year
36 in contributions excluding grants from governmental agencies
37 or private foundations, the balance sheet and income and
38 expense statement, or financial statement provided, shall be
39 audited by an independent public accountant. Organizations are
40 required to report the amount of money raised in the state and
41 the amount spent in the state for charitable purposes;

42 (7) A copy of any determination of the organization's tax
43 exempt status under the provisions of 26 U.S.C. §501(c)(3) and
44 a copy of the last filed Internal Revenue Service form 990 and
45 Schedule A for every charitable organization and any parent
46 organization;

47 (8) Whether the organization intends to solicit contributions
48 from the public directly or have other solicitation done on its
49 behalf by others;

50 (9) Whether the organization is authorized by any other
51 governmental authority to solicit contributions and whether it
52 is or has ever been enjoined by any court from soliciting
53 contributions;

54 (10) The general purpose or purposes for which the
55 contributions to be solicited shall be used;

56 (11) The name or names under which it intends to solicit
57 contributions;

58 (12) The names of the individuals or officers of the
59 organization who will have final responsibility for the custody
60 of the contributions;

61 (13) The names of the individuals or officers of the
62 organization responsible for the final distribution of the
63 contributions; and

64 (14) Copies of all contract documentation from professional
65 fund-raising counsels and professional solicitors as provided for
66 in subsection (d), section seven of this article.

67 (b) Each chapter, branch or affiliate, except an independent
68 member agency of a federated fund-raising organization, may
69 separately report the information required by this section or
70 report the information to its parent organization which shall
71 then furnish the information regarding its West Virginia
72 affiliates, chapters and branches in a consolidated form to the
73 secretary of state. An independent member agency of a feder-
74 ated fund-raising organization, as defined in section two of this
75 article, shall comply with the provisions of this article inde-
76 pendently. Each organization shall file a separate registration
77 form for each name under which funds will be solicited.

78 (c) The registration forms and any other documents
79 prescribed by the secretary of state shall be signed by an
80 authorized officer or by an independent public accountant and
81 by the chief fiscal officer of the charitable organization and
82 shall be verified under oath.

83 (d) Every charitable organization collecting less than one
84 million dollars during any year which submits an independent
85 registration to the secretary of state shall pay an annual registra-
86 tion fee of fifteen dollars; every charitable organization
87 collecting more than one million dollars during one year which
88 submits an independent registration to the secretary of state

89 shall pay an annual registration fee of fifty dollars; and a parent
90 organization filing on behalf of one or more chapters, branches
91 or affiliates or a single organization filing under different names
92 shall pay a single annual registration fee of fifty dollars for
93 itself and the chapters, branches or affiliates included in the
94 registration statement. All fees and moneys collected by the
95 secretary of state pursuant to the provisions of this article shall
96 be deposited by the secretary of state as follows: One-half shall
97 be deposited in the state general revenue fund and one-half shall
98 be deposited in the services fees and collections account
99 established by section two, article one, chapter fifty-nine of this
100 code for the operation of the office of the secretary of state. The
101 secretary of state shall dedicate sufficient resources from that
102 fund or other funds to provide the services required in this
103 article.

104 (e) For good cause shown, the secretary of state may extend
105 the due date for the annual filing of a registration statement or
106 report by a charitable organization or a professional fund-raiser
107 for a period not to exceed ninety days. During that period, the
108 previously filed registration statement or report of the charitable
109 organization which has been granted the extension remains in
110 effect.

111 (f) In addition to the registration fee required by this
112 section, a charitable organization and/or professional fund-
113 raiser, which fails to file a registration statement or report by
114 the original or extended due date for filing as required by this
115 section shall, for each month or part of the month thereafter in
116 which the registration statement or report is not filed, pay an
117 additional fee of twenty-five dollars: *Provided*, That the total
118 amount of the additional fees for a registration statement or
119 report required to be filed in any one year shall not exceed five
120 hundred dollars. All fees and moneys collected by the secretary
121 of state pursuant to the provisions of this article shall be
122 deposited by the secretary of state as follows: One-half shall be

123 deposited in the state general revenue fund and one-half shall
124 be deposited in the service fees and collections account
125 established by section two, article one, chapter fifty-nine of this
126 code for the operation of the office of the secretary of state.
127 Any balance remaining on the thirtieth day of June, two
128 thousand one, in the existing special revenue account entitled
129 “charitable organization fund” as established by chapter thirty-
130 four, acts of the Legislature, regular session, one thousand nine
131 hundred ninety-two, shall be transferred to the service fees and
132 collections account established by section two, article one,
133 chapter fifty-nine of this code for the operation of the secretary
134 of state. The secretary of state shall dedicate sufficient re-
135 sources from that fund or other funds to provide the services
136 required in this article.

§29-19-6. Certain persons and organizations exempt from registration.

1 The following charitable organizations shall not be required
2 to file an annual registration statement with the secretary of
3 state:

4 (1) Educational institutions, the curriculums of which, in
5 whole or in part, are registered or approved by the state board
6 of education, either directly or by acceptance of accreditation
7 by an accrediting body recognized by the state board of
8 education; and any auxiliary associations, foundations and
9 support groups which are directly responsible to any such
10 educational institutions;

11 (2) Persons requesting contributions for the relief of any
12 individual specified by name at the time of the solicitation
13 when all of the contributions collected without any deductions
14 whatsoever are turned over to the named beneficiary for his or
15 her use;

16 (3) Hospitals which are nonprofit and charitable;

17 (4) Organizations which solicit only within the membership
18 of the organization by the members thereof: *Provided*, That the
19 term “membership” shall not include those persons who are
20 granted a membership upon making a contribution as the result
21 of solicitation. For the purpose of this section, “member” means
22 a person having membership in a nonprofit corporation, or other
23 organization, in accordance with the provisions of its articles of
24 incorporation, bylaws or other instruments creating its form and
25 organization; and having bona fide rights and privileges in the
26 organization, such as the right to vote, to elect officers, direc-
27 tors and issues, to hold office or otherwise as ordinarily
28 conferred on members of such organizations;

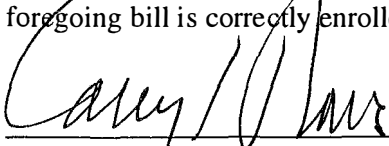
29 (5) Churches, synagogues, associations or conventions of
30 churches, religious orders or religious organizations that are an
31 integral part of a church which qualifies as tax exempt under
32 the provisions of 26 U.S.C. §501(c)(3) and which qualifies as
33 being exempt from filing an annual return under the provisions
34 of 26 U.S.C. §6033;

35 (6) Any person, firm, corporation or organization that
36 sponsors a single fund-raising event for the benefit of a named
37 charitable organization where all or part of the funds collected
38 are donated to the named charitable organization: *Provided*,
39 That the named charitable organization receiving the funds is
40 registered pursuant to this article, reports each of these dona-
41 tions individually, and certifies that no funds were withheld by
42 the organization that solicited the funds;

43 (7) Any charitable organization that does not employ a
44 professional solicitor or fund-raiser and does not intend to
45 solicit and receive and does not actually raise or receive
46 contributions from the public in excess of twenty-five thousand
47 dollars during a calendar year.

48 Charitable organizations which do not intend to solicit and
49 receive in excess of twenty-five thousand dollars, but do receive
50 in excess of that amount from the public, shall file the annual
51 registration statement within thirty days after contributions are
52 in excess of twenty-five thousand dollars.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



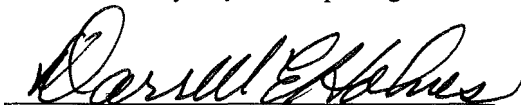
Chairman Senate Committee



Chairman House Committee

Originating in the House.

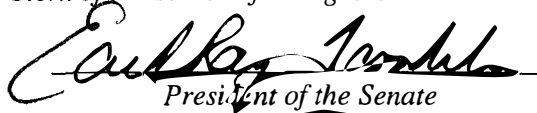
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

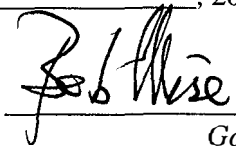


President of the Senate



Speaker of the House of Delegates

The within is approved this the 2nd
day of April, 2002.



Governor

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Date: 3/27/02
Time: 10:15 AM