

1 **H. B. 3112**

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3 (By Delegates Lawrence and Barker)
4 (By Request of the Secretary of State)
5 [Introduced February 11, 2011; referred to the
6 Committee on the Judiciary.]
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10 A BILL to amend and reenact §29-19-1a and §29-19-2 of the Code of
11 West Virginia, 1931, as amended, all relating to the
12 "Solicitation of Charitable Funds Act" coverage and
13 definitions.

14 *Be it enacted by the Legislature of West Virginia:*

15 That §29-19-1a and §29-19-2 of the Code of West Virginia,
16 1931, as amended, be amended and reenacted, all to read as follows:

17 **ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.**

18 **§29-19-1a. General purpose.**

19 The purpose of this article is to protect the people of the
20 State of West Virginia by requiring full public disclosure by
21 persons and organizations who solicit or receive funds from the
22 public and the purposes for which such funds are solicited and how
23 they are actually used, and to prevent deceptive and dishonest
24 statements and conduct in the solicitation and reporting of funds
25 for or in the name of charity.

26 **§29-19-2. Definitions.**

1 As used in this article:

2 (1) "Audit" means the systematic examination of records and
3 documents and the securing of other evidence by confirmation,
4 physical inspection, or otherwise, that includes a written
5 assurance that financial statements and reports are fairly
6 presented in conformity with generally accepted accounting
7 principles issued by the American Institute of Certified Public
8 Accountants.

9 (2) "Charitable organization" means a person who is or holds
10 itself out to be a benevolent, educational, philanthropic, humane,
11 patriotic, religious or eleemosynary organization, or any person
12 who solicits or obtains contributions solicited or recieved from
13 the public for charitable or nonprofit purposes, or any person who
14 in any manner employs any appeal for contributions which may be
15 reasonably interpreted to suggest that any part of those
16 contributions will be used for charitable or nonprofit purposes.
17 A chapter, branch, area, office or similar affiliate or any person
18 soliciting or receiving contributions within the state for a
19 charitable organization which has its principal place of business
20 outside the state is a charitable organization for the purposes of
21 this article.

22 (3) "Contribution" means the promise or grant of any money or
23 property of any kind or value.

24 (4) "Financial review" means an examination of financial
25 statements in accordance with generally accepted accounting
26 principles issued by the American Institute of Certified Public

1 Accountants, in which a certified public accountant has a
2 reasonable basis for expressing limited assurance that the reviewed
3 statements are free of material misstatements or false or missing
4 information and are found to be accurate, complete and fairly
5 presented to meet the requirements of the generally accepted
6 accounting principles.

7 (5) "Solicit" and "solicitation" means the request or appeal,
8 directly or indirectly, for any contribution on the plea or
9 representation that the contribution will be used for a charitable
10 or nonprofit purpose, including, without limitation, the following
11 methods of requesting a contribution:

12 (A) Any oral or written request;

13 (B) Any announcement to the press, over the radio or
14 television, or by telephone, electronic mail or messaging,
15 electronic bulletin board, or Internet technology, concerning an
16 appeal or campaign to which the public is requested to make a
17 contribution for any charitable or nonprofit purpose connected
18 therewith;

19 (C) The distribution, circulation, posting or publishing of
20 any handbill, written advertisement or other publication which
21 directly or by implication seeks to obtain public support; or

22 (D) The sale of, offer or attempt to sell, any advertisement,
23 advertising space, subscription, ticket or any service or tangible
24 item in connection with which any appeal is made for any charitable
25 or nonprofit purpose or where the name of any charitable or civic
26 organization is used or referred to in an appeal as an inducement

1 or reason for making the sale, or when or where in connection with
2 the sale, any statement is made that the whole or any part of the
3 proceeds from the sale will be donated to any charitable or
4 nonprofit purpose.

5 "Solicitation", as defined herein, occurs when the request is
6 made, at the place the request is received, whether or not the
7 person making the request actually receives any contribution.

8 (6) "Federated fund-raising organization" means a federation
9 of independent charitable organizations which have voluntarily
10 joined together, including, but not limited to, a united fund or
11 community chest, for purposes of raising and distributing money for
12 and among themselves and where membership does not confer operating
13 authority and control of the individual agencies upon the federated
14 group organization.

15 (7) "Parent organization" is that part of a charitable
16 organization which coordinates, supervises or exercises control
17 over policy, fund raising and expenditures, or assists, receives
18 funds from or advises one or more chapters, branches or affiliates
19 in the state.

20 (8) "Person" means any individual, organization, trust,
21 foundation, group, association, partnership, corporation, society
22 or any combination of them.

23 (9) "Professional fund-raising counsel" means any person who
24 for a flat fixed fee under a written agreement plans, conducts,
25 manages, carries on, advises or acts as a consultant, whether
26 directly or indirectly, in connection with soliciting contributions

1 for, or on behalf of any charitable organization but who actually
2 solicits no contributions as a part of the services. A bona fide
3 salaried officer or employee of a charitable organization
4 maintaining a permanent establishment within the state is not a
5 professional fund-raising counsel.

6 (10) "Professional solicitor" means any person who, for a
7 financial or other consideration, solicits contributions for, or on
8 behalf of a charitable organization, whether the solicitation is
9 performed personally or through that person's agents, servants or
10 employees specially employed by, or for a charitable organization,
11 who are engaged in the solicitation of contributions under the
12 direction of that person, or a person who plans, conducts, manages,
13 carries on, advises or acts as a consultant to a charitable
14 organization in connection with the solicitation of contributions
15 but does not qualify as "professional fund-raising counsel" within
16 the meaning of this article. A bona fide salaried officer or
17 employee of a charitable organization maintaining a permanent
18 establishment within the state is not a professional solicitor.

19 No attorney, investment counselor or banker, who advises any
20 person to make a contribution to a charitable organization, is
21 considered, as the result of the advice, a professional fund-
22 raising counsel or a professional solicitor.

NOTE: The purpose of this bill is to clarify the distinction
of nonprofit in charitable organizations.

Strike-throughs indicate language that would be stricken from
the present law, and underscoring indicates new language that would
be added.

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