

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 3079

BY DELEGATES O'NEAL, UPSON, HOUSEHOLDER,

HANSHAW AND SOBONYA

[Introduced March 14, 2017; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §29-19-2 of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto two sections, designated as §29-19-10a and §29-19-
 3 10b, all relating to records of charitable institutions; providing records of such institutions
 4 may be made public; defining terms; providing for nondisclosure of charitable donors
 5 generally; providing exceptions; providing for suits for enforcement; providing for an
 6 escheat to the state of damages; reserving an exception for costs and fees; providing for
 7 punitive damages in cases of intentional violation.

Be it enacted by the Legislature of West Virginia:

1 That §29-19-2 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted, and that said code be amended by adding thereto two sections, designated as §29-
 3 19-10a and §29-19-10b, all to read as follows:

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-2. Definitions.

1 As used in this article:

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

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

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

16 (4) "Financial review" means an examination of financial statements in accordance with
17 generally accepted accounting principles issued by the American Institute of Certified Public
18 Accountants, in which a certified public accountant has a reasonable basis for expressing limited
19 assurance that the reviewed statements are free of material misstatements or false or missing
20 information and are found to be accurate, complete and fairly presented to meet the requirements
21 of the generally accepted accounting principles.

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

25 (A) Any oral or written request;

26 (B) Any announcement to the press, over the radio or television, or by telephone,
27 electronic mail or messaging, electronic bulletin board, or Internet technology, concerning an
28 appeal or campaign to which the public is requested to make a contribution for any charitable
29 purpose connected therewith;

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

33 (D) The sale of, offer or attempt to sell, any advertisement, advertising space, subscription,
34 ticket or any service or tangible item in connection with which any appeal is made for any
35 charitable purpose or where the name of any charitable or civic organization is used or referred
36 to in an appeal as an inducement or reason for making the sale, or when or where in connection
37 with the sale, any statement is made that the whole or any part of the proceeds from the sale will
38 be donated to any charitable purpose.

39 "Solicitation", as defined herein, occurs when the request is made, at the place the request

40 is received, whether or not the person making the request actually receives any contribution.

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

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

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

51 (9) "Professional fund-raising counsel" means any person who for a flat fixed fee under a
52 written agreement plans, conducts, manages, carries on, advises or acts as a consultant, whether
53 directly or indirectly, in connection with soliciting contributions for, or on behalf of any charitable
54 organization but who actually solicits no contributions as a part of the services. A bona fide
55 salaried officer or employee of a charitable organization maintaining a permanent establishment
56 within the state is not a professional fund-raising counsel.

57 (10) "Professional solicitor" means any person who, for a financial or other consideration,
58 solicits contributions for, or on behalf of a charitable organization, whether the solicitation is
59 performed personally or through that person's agents, servants or employees specially employed
60 by, or for a charitable organization, who are engaged in the solicitation of contributions under the
61 direction of that person, or a person who plans, conducts, manages, carries on, advises or acts
62 as a consultant to a charitable organization in connection with the solicitation of contributions but
63 does not qualify as "professional fund-raising counsel" within the meaning of this article. A bona
64 fide salaried officer or employee of a charitable organization maintaining a permanent
65 establishment within the state is not a professional solicitor.

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

69 (11) "Public Agency" means any department, office, commission, board, or division of state
70 government; and any county, city, district, or other political subdivision or municipal corporation
71 or any department, office, commission, court, or board or any other state or local government unit,
72 however designated.

§29-19-10a. Protecting Privacy of Association.

1 (a) Notwithstanding any other law, no public agency shall release or allow to be released
2 or be required to release any record which identifies the association of a private person with an
3 entity with a charitable tax exemption under Sections 501(c)(2)-(10) of the Internal Revenue Code
4 (or any successor provision of federal tax law) or identifies the type or level of financial or
5 nonfinancial support of a private person for such an entity, without the express written permission
6 of the entity or person or at the request of the person.

7 (b) A public agency may satisfy subsection (a) by redacting from a record any identifying
8 information that would tend to show association of private persons, including nonspecific
9 information that would allow a reasonable person to identify the persons involved.

10 (c) This section shall not preclude any lawful warrant for information issued by a court of
11 competent jurisdiction, or other instances where nondisclosure would create a clear and present
12 danger to a compelling state interest.

13 (d) Whenever possible, record filing rules issued by public agencies should not require the
14 collection of the kind of private association information described in subsection (a), or if collected,
15 such information should be discarded when retention is no longer necessary for the original
16 purpose of collection.

§29-19-10b: Enforcement by State or Private Citizen Action.

17 (a) An individual who believes his individual right to privacy has been invaded in violation

18 of this statute may bring suit for any appropriate civil remedy.

19 (b) If the person who brings the citizen's action prevails, the judgment awarded shall
20 escheat to the state, but he or she shall be entitled to be reimbursed by the state for costs and
21 attorneys' fees he or she has incurred, as well as the costs of resolving any personal or property
22 damage that would not have occurred but for the violation of this chapter. In the case of a citizen's
23 action that is dismissed and that the court also finds was brought without reasonable cause, the
24 court may order the person commencing the action to pay all costs of trial incurred by the
25 defendant, not including attorneys' fees.

26 (c) In any action brought under this section, if the violation is found to have been
27 intentional, the amount of the judgment, which shall for this purpose include the costs, may be
28 trebled as punitive damages. If the defendant prevails, he or she shall be awarded all costs of
29 trial, and may be awarded reasonable attorneys' fees to be fixed by the court to be paid by the
30 state.

NOTE: The purpose of this bill is to protect the identity of private persons supporting charities through financial or nonfinancial contributions. The bill also provides for enforcement provisions.

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