

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

Charitable Solicitations

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



Senate Document No. 24

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Report of the Joint Subcommittee Studying
Charitable Solicitations
to
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1988

To: Honorable Gerald L. Baliles, Governor of Virginia
and
The General Assembly of Virginia

INTRODUCTION

The following resolution, Senate Joint Resolution No. 190, agreed to during the 1987 General Assembly Session, established a joint subcommittee to review Chapter 5 (§ 57-48 et seq.) of Title 57, entitled "Solicitation of Contributions," to determine whether revisions should be made. The joint subcommittee was asked to review the chapter to determine whether its provisions adequately protect consumers making charitable contributions and provide a healthy atmosphere for fund-raising activities.

SENATE JOINT RESOLUTION NO. 190

Establishing a joint subcommittee to study the solicitation of contributions.

WHEREAS, charitable giving continues to be a worthwhile preoccupation of Virginians as indicated by the increase in amounts given to charitable organizations; and

WHEREAS, the provisions in Chapter 5 (§ 57-48 et seq.) of Title 57 of the Code of Virginia pertaining to solicitation of contributions were enacted in 1974 to prevent fraudulent solicitations by providing fair, uniform and impartial regulation of organizations soliciting in Virginia; and

WHEREAS, the Department of Agriculture and Consumer Services through the administration of this chapter provides Virginians with an established access through which to learn complete information relating to an organization's purpose, officers, personnel and income and expenses; and

WHEREAS, the administration and operation of the Charitable Solicitations Program by the Department are financed through the registration fees of charitable organizations and professional fundraisers; and

WHEREAS, a comprehensive review of the laws pertaining to charitable contributions is warranted to ensure that their provisions adequately protect consumers and that the atmosphere for such fund raising activity remains healthy; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee is hereby established to review Chapter 5 (§ 57-48 et seq.) of Title 57 of the Code of Virginia and to determine whether it would be desirable to revise that chapter.

The joint subcommittee shall consist of two members of the Senate Committee on General Laws, to be appointed by the Senate Committee on Privileges and Elections and three members of the House Committee on General Laws, to be appointed by the Speaker of the House of Delegates.

The joint subcommittee shall complete its work in time to submit its recommendations to the 1988 Session of the General Assembly.

BACKGROUND

The Solicitation of Contributions Law was enacted by the General Assembly in 1974. The Administrator of Consumer Affairs was given the responsibility of administering the Law.

In 1975 the Law was amended to permit registration fees to be used to administer the Law and to postpone the effective date of required registration from January 1, 1976, to July 1, 1976. Since registration fees were not sufficient for the administration of the Law, the Law was again amended in 1977 to postpone the required registration date until July 1, 1978. Statewide regulation of charitable organizations was implemented in December 1978 following the funding of administrative costs by the General Assembly.

In 1979, the responsibility for the administration of the Law was transferred from the Administrator of Consumer Affairs to the Commissioner of the Department of Agriculture and Consumer Services (the Commissioner) and an exemption from registration was established for civic organizations. In 1980, the limitation on professional solicitors' fees was repealed and replaced by a provision requiring professional solicitors to disclose to the public the amount of any contribution which would be received by the charitable organization, provided that no such disclosure need be made if the charitable organization received at least 70% of the contribution. In 1983, the Law was amended to include in the definition of "professional fund-raising counsels and solicitors" those professionals contracting with civic, as well as charitable, organizations. In addition, the bonding requirement for professionals was increased from \$5,000 to \$20,000.

The 1984 General Assembly established a registration fee structure sufficient to fully fund the administration of the Law with the condition that the Commissioner establish an Advisory Committee to review funding. The General Assembly requested that recommendations regarding the registration fee structure, which was due to expire on June 30, 1986, be submitted for consideration in the 1986 Session. The Commissioner appointed an Advisory Committee that included representatives from various charitable organizations, the Retail Merchants Association, and the Better Business Bureau, as well as local administrators, professional solicitors and private citizens. The Advisory Committee, in addition to recommending changes in the funding of the program, suggested strengthening the administration and enforcement of the Law. This legislation was not introduced during the 1986 Session. The 1986 General Assembly extended the fee structure through June 30, 1987. House Joint Resolution 5, which requested a study of the Charitable Solicitation Law, was passed by indefinitely in the House Rules Committee and the study was subsequently undertaken by a subcommittee of the House General Laws Committee. Delegate William T. Wilson chaired the subcommittee. The subcommittee studied the recommendations made by the Charitable Solicitations Advisory Committee and held a public hearing. The recommendations submitted by the Advisory Committee were refined and introduced as House Bill 1253 during the 1987 Session. As introduced the bill eliminated all exemptions from the annual registration requirement and strengthened enforcement procedures. A flat registration fee of \$75 for all organizations with more than \$25,000 in revenue was established and the sliding scale registration fee which was due to expire on June 30, 1987, was eliminated. The bill passed the House of Delegates, but the Senate opposed the elimination of exemptions and passed a substitute which extended the registration fee sunset provision through June 30, 1988, and did not amend the Law in any other way. The bill went to conference and the conference committee report was accepted by both houses. The final version of the bill, which became law on July 1, 1987, contained the following provisions:

- Retained the sliding scale registration fee and extended the registration fee sunset provision through June 30, 1988.
- The exemption section was not amended. This bill did not change the exemption status of any organization.
- Authorized the Commissioner to publish a warning when an unregistered professional solicitor operates in Virginia.
- Required a professional solicitor to disclose his name, his employer, that he is a professional solicitor and (in writing) that financial statements are available from the Office of Consumer Affairs.
- Expanded the prohibited practices under the Law.
- Expanded the Commissioner's authority to investigate (subpoena witnesses, administer oaths, etc.).
- Provided that county, city and town attorneys may enjoin organizations from continued violations of the Law.
- Provided for a late filing fee for professional solicitors.
- Deleted bonding requirements for professional fund-raising counsels.
- Required professional solicitors to file contracts with civic and charitable organizations ten days prior to commencement of the contract and completed notices of solicitation with the Commissioner and to maintain certain other records.
- Placed restrictions on soliciting for tickets to be donated to third parties.
- Authorized the Commissioner to suspend or revoke registration for certain violations of the Law.

ACTIVITIES AND FINDINGS

The joint subcommittee held an organizational meeting, a public hearing and a work session. The Office of Consumer Affairs served as a resource to the subcommittee. The subcommittee reviewed the Charitable Solicitations Law and the 1987 amendments to the Law.

The subcommittee found that the Law regulates civic organizations, charitable organizations, professional solicitors and professional fund-raising counsels. Each of these entities is defined in the Law. Some professional solicitors, professional fund-raising counsels and charitable organizations must register with the Office of Consumer Affairs annually. There are three types of organizations: (1) those that must register; (2) those that are exempt; and (3) those that are excluded from the Law entirely. Organizations that are exempt must apply for that exemption and pay a one-time \$10 fee. They remain exempt and never have to reapply unless their status changes. Exempt organizations are exempt from two things: (1) registration, and (2) keeping certain financial records. They are subject to the other provisions of the Law. Excluded organizations are excluded from the Law entirely; it simply does not apply to them.

Professional fund-raising counsels and professional solicitors who work with registered or exempt organizations must register with the Office of Consumer Affairs, but do not have to register if they work with an excluded organization. Registration of organizations involves paying a fee, disclosing certain information about the kind and amount of funds raised, fund-raising expenses and disbursement of funds raised -- plus assorted other information. Registered organizations are also required to keep certain financial records.

The Law includes a list of prohibited practices which are designed to prevent organizations from misleading consumers and to help the Office of Consumer Affairs investigate. The Law gives the Office of Consumer Affairs the power and duty to review submitted records, respond to consumer requests for information about specific charities, investigate fund-raising activities, issue public warnings of unregistered solicitations and, if the circumstances warrant, refer violations to legal officials for possible prosecution.

The subcommittee heard from over twenty speakers at the public hearing. Representatives from civic and charitable organizations, telemarketing agencies, universities, hospitals and consumer groups presented their views to the subcommittee. Several organizations that are currently exempt or excluded from the Law testified that registration with the Office of Consumer Affairs would be an additional and unwelcome burden for their members, who are often volunteers, and would limit the amount of time and money they are able to spend on worthwhile causes. Several speakers pointed out that the Commonwealth benefits financially and in many other ways from the charitable services that their organizations provide. However, some representatives of civic and charitable organizations stated their belief that all such organizations should be accountable to the public and required to register, that all charitable and civic organizations should be treated equally and that the cost of regulation should be shared by all organizations subject to the Law, not just those required to register.

Representatives of the telemarketing industry objected to the current Code provision requiring professional solicitors to disclose at the time of solicitation the minimum percentage of any amount contributed which will be received by the charitable or civic organization for its own use, because it is difficult to calculate an accurate figure. Representatives of the telemarketing industry also objected to the requirement that contracts between a professional solicitor and a charitable or civic organization and a solicitation notice be filed with the Office of Consumer Affairs ten days prior to the commencement of each solicitation campaign, stating that this requirement makes it difficult to solicit for disaster relief.

The subcommittee also heard that there are instances of abuse and misrepresentation which defraud consumers of their money. The Office of Consumer Affairs told the subcommittee that \$3.2 million is collected per day in Virginia for charities, excluding religious organizations, and that eighty percent of the money collected by professional solicitors goes to professional solicitors rather than to charity.

RECOMMENDATIONS

The subcommittee determined that while most organizations operate in a legitimate manner, there is potential for abuse and fraud in the collection of charitable contributions and that the public should be protected from abuse and misrepresentation. The subcommittee felt that consumers have a right to know how their charitable contributions are spent. The subcommittee recommends retaining the current fee schedule for registered organizations by removing the sunset provision on fee collection by the Office of Consumer Affairs. This will allow the Office of Consumer Affairs to continue to administer the Charitable Solicitations Law indefinitely. The subcommittee recommends strengthening the Law without removing the existing exemptions and exclusions and has proposed legislation, which appears in the Appendix. The proposed legislation contains housekeeping and editorial changes, as well as substantive changes. Each substantive change is summarized below.

§ 57-48, page 2, line 16. -- Clarifies that only local organizations will qualify for this exemption. This change will effect approximately 20 organizations, most of which are out-of-state national organizations.

§ 57-49, page 7, lines 7 - 10. -- Allows organizations with gross revenues of less than \$25,000 to provide a treasurer's report in lieu of a certified annual audit or completed IRS Form 990. The IRS does not require the completion of Form 990 when an organization receives less than \$25,000 in gross revenues.

§ 57-49, page 9, lines 12 - 13. -- Eliminates the registration fee sunset provision. The elimination of the sunset provision will provide continued funding for the regulation of charitable organizations and professional fund-raisers. If this amendment does not pass, the Office of Consumer Affairs' authority to collect registration fees will expire on June 30, 1988.

§ 57-52, page 10, lines 3, 6. -- Provides that the Office of Consumer Affairs will not be required to prove that the solicitation has continued past the notification period as required by existing law.

§ 57-54, page 10, lines 26 - 28. -- Provides that contracts between a professional solicitor and a charitable or civic organization shall be filed with the Commissioner at least ten days prior to commencement of the contract. The section currently provides that such contracts must be filed within ten days after the contract is entered into. This amendment will bring the section into agreement with § 57-61, which was amended in 1987 to require professional solicitors to file a contract with a charitable organization with the Commissioner at least ten days prior to commencement of a solicitation campaign.

§ 57-55.1, page 11, lines 6 - 10, 12 - 14. -- Specifies that the required disclosure must be clear and conspicuous and that it must be prior to an oral request for a contribution or contemporaneous with a written request for a contribution.

Eliminates questions about the constitutionality of the section by removing the provision that disclosure is not required if the percentage received by the charitable or civic organization is at least 70%.

§ 57-57, page 15, line 3. -- Changes the word "registered" to "filed." The Office of Consumer Affairs states that this change will clarify the statute to reflect that an organization exempt from the annual registration process is properly filed under the Solicitation of Contributions Law.

§ 57-57, page 15, lines 20 - 23. -- Prohibits a professional solicitor from soliciting on behalf of a charitable or civic organization unless the charitable or civic organization has registered or been granted an exemption.

§ 57-61, page 16, line 25. -- The word "agents" was added to provide consistency between subsections A (see page 16, line 13) and B and to ensure the inclusion of all appropriate parties under this Code section. The omission of the word "agents" from subsection B would legally allow the Office of Consumer Affairs to require separate bonding of individual agents. This is inconsistent with other Code sections as well as administrative policy and appears to have been an oversight.

§ 57-61.1, page 19, lines 8, 10, 11, and 16, 17, 18. -- This amendment would allow the Commissioner to suspend or revoke a professional solicitor's registration for violations of § 57-61 and the regulations governing charitable solicitations, in addition to the current grounds for revocation or suspension. If the Commissioner finds that a violation of these provisions requires urgent action because of the public health, safety or welfare, he may provide advance notice of as little as twenty-four hours for a hearing under the Administrative Process Act.

The Joint Subcommittee Studying Charitable Solicitations recommends that the 1988 General Assembly adopt the proposed legislation.

Respectfully submitted,

Richard J. Holland, Chairman

William T. Wilson, Vice Chairman

Charles J. Colgan

Willard R. Finney

William S. Moore, Jr.

APPENDIX

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SENATE BILL NO. HOUSE BILL NO.

A BILL to amend and reenact §§ 57-48, 57-49, 57-52, 57-54, 57-55.1, 57-57, 57-61 and 57-61.1 of the Code of Virginia, relating to the solicitation of contributions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 57-48, 57-49, 57-52, 57-54, 57-55.1, 57-57, 57-61 and 57-61.1 of the Code of Virginia are amended and reenacted as follows:

§ 57-48. Definitions.-- ~~Unless a different meaning is required by the context, the following terms as As used in this chapter shall have the meanings hereinafter respectively ascribed to them , unless the context requires a different meaning :~~

(1) [Repealed.]

~~(1a)~~ "Board - " The means the Board of Agriculture and Consumer Services.

~~(1b)~~ "Commissioner - " The means the Commissioner of Agriculture and Consumer Services, or a member of his staff to whom he may delegate his duties under this chapter.

~~(2)~~ "Charitable organization - " Any 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)

1 any political party as defined in § 24.1-1 or any political campaign
2 committee required by state or federal law to file a report or
3 statement of contributions and expenditures; (iii) any labor union
4 registered under § 40.1-76 nor any trade association; or (iv) any
5 authorized individual who solicits, by authority of such organization,
6 solely on behalf of a registered or exempt charitable organization or
7 on behalf of an organization excluded from the definition of
8 charitable organization.

9 ~~(3)~~ "Charitable purpose - " Any means any charitable,
10 benevolent, humane, philanthropic, patriotic, or eleemosynary purpose
11 and the purposes of influencing legislation or influencing the actions
12 of any public official or instigating, prosecuting, or intervening in
13 litigation.

14 ~~(3a)~~ "Civic organization - " Any means any local service club,
15 veterans' post, fraternal society or association, volunteer fire or
16 rescue groups, or local civic league or association of ten or more
17 persons not organized for profit but operated exclusively for
18 educational or charitable purposes as defined herein, including the
19 promotion of community welfare, and the net earnings of which are
20 devoted exclusively to charitable, educational, recreational or social
21 welfare purposes.

22 ~~(4)~~ "Contribution - " Any means any gift, bequest, devise or
23 other grant of any money, credit, financial assistance or property of
24 any kind or value, including the promise to contribute, except
25 payments by the membership of an organization for membership fees,
26 dues, fines, or assessments, or for services rendered to individual
27 members, and except money, credit, financial assistance or property
28 received from any governmental authority. The term "contribution"

1 shall not include any donation of blood or any gift made pursuant to
2 Article 2 (§ 32.1-289 et seq.) of Chapter 8 of Title 32.1 of the Code

3 {5} "Federated fund-raising organization - " Any means any
4 federation of independent charitable organizations which have
5 voluntarily joined together, including but not limited to a United
6 Fund or Community Chest, for purposes of raising and distributing
7 money for and among themselves and where membership does not confer
8 operating authority and control of the individual agencies upon the
9 federated group organization.

10 {6} "Fund-raising expenses - " The means the expenses of all
11 activities that constitute or are an integral and inseparable part of
12 a solicitation.

13 {7} "Membership - " These means those persons to whom, for
14 payment of fees, dues, assessments, etc., an organization provides
15 services and confers a bona fide right, privilege, professional
16 standing, honor or other direct benefit, in addition to the right to
17 vote, elect officers, or hold offices. The term "membership" shall not
18 include those persons who are granted a membership upon making a
19 contribution as the result of solicitation.

20 {8} "Parent organization - " That means that part of a
21 charitable organization which coordinates, supervises or exercises
22 control over policy, fund raising, and expenditures, or assists or
23 advises one or more chapters, branches or affiliates.

24 {9} "Person - " Any means any individual, organization, trust,
25 foundation, association, partnership, corporation, society, or other
26 group or combination acting as a unit.

27 {10} "Professional fund-raising counsel - " Any means any person
28 who for a flat fixed fee under a written agreement plans, conducts,

1 manages, carries on, advises or acts as a consultant, whether directly
2 or indirectly, in connection with soliciting contributions for, or on
3 behalf of, any charitable or civic organization, but who actually
4 solicits no contributions as a part of such services. A bona fide
5 salaried officer or employee of a registered or exempt charitable
6 organization or the bona fide salaried officer or employee of a
7 registered parent organization shall not be deemed to be a
8 professional fund-raising counsel.

9 ~~{11}~~ "Professional solicitor - " Any means any person who, for a
10 financial or other consideration, solicits contributions for, or on
11 behalf of, a charitable or civic organization, whether such
12 solicitation is performed personally or through his agents, servants,
13 or employees or through agents, servants, or employees specially
14 employed by, or for a charitable or civic organization, who are
15 engaged in the solicitation of contributions under the direction of
16 such person, or any person who, for a financial or other
17 consideration, plans, conducts, manages, carries on, advises or acts
18 as a consultant to a charitable or civic organization in connection
19 with the solicitation of contributions but does not qualify as a
20 professional fund-raising counsel. A bona fide salaried officer or
21 employee of a registered or exempt charitable organization or a bona
22 fide salaried officer or employee of a registered parent organization
23 shall not be deemed to be a professional solicitor.

24 ~~{12}~~ "Sale," "sell" and "sold - " The mean the transfer of any
25 property or the rendition of any service to any person in exchange for
26 consideration, including any purported contribution without which such
27 property would not have been transferred or such services would not
28 have been rendered.

1 ~~(13)~~ "Solicit" and "solicitation" - " The mean the request or
 2 appeal, directly or indirectly, for any contribution on the plea or
 3 representation that such contribution will be used for a charitable
 4 purpose, including, without limitation, the following methods of
 5 requesting such contribution:

6 ~~(a)~~ 1. Any oral or written request;

7 ~~(b)~~ 2. Any announcement to the press, over the radio or
 8 television, or by telephone or telegraph concerning an appeal or
 9 campaign to which the public is requested to make a contribution for
 10 any charitable purpose connected therewith;

11 ~~(c)~~ 3. The distribution, circulation, posting or publishing of
 12 any handbill, written advertisement or other publication which
 13 directly or by implication seeks to obtain public support;

14 ~~(d)~~ 4. The sale of, offer or attempt to sell, any
 15 advertisement, advertising space, subscription, ticket, or any servic
 16 or tangible item in connection with which any appeal is made for any
 17 charitable purpose or where the name of any charitable organization is
 18 used or referred to in any such appeal as an inducement or reason for
 19 making any such sale, or when or where in connection with any such
 20 sale, any statement is made that the whole or any part of the proceeds
 21 from any such sale will be donated to any charitable purpose.

22 "Solicitation" as defined herein, shall be deemed to occur when
 23 the request is made, at the place the request is received, whether or
 24 not the person making the same actually receives any contribution.

25 § 57-49. Registration of charitable organizations.-- ~~(a)~~ A.
 26 Every charitable organization, except as otherwise provided in this
 27 chapter, which intends to solicit contributions within this
 28 Commonwealth, or have funds solicited on its behalf, shall, prior to

1 any solicitation, file an initial registration statement with the
2 Commissioner upon forms acceptable to him. Each registration
3 statement shall thereafter be refiled on or before the fifteenth day
4 of the fifth calendar month of the next and each following fiscal year
5 in which such charitable organization is engaged in solicitation
6 activities within this Commonwealth. It shall be the duty of the
7 president, chairman or principal officer of such charitable
8 organization to file the statements required under this chapter. Such
9 statement shall contain the following information:

10 1. The name of the organization and the purpose for which it was
11 organized.

12 2. The principal address of the organization, the address of any
13 offices in this Commonwealth and its designated agent for process with
14 the Commonwealth. If no such agent is designated, the organization
15 shall be deemed to have designated the Secretary of the Commonwealth.
16 If the organization does not maintain an office, the name and address
17 of the person having custody of its financial records.

18 3. The names and addresses of any chapters, branches or
19 affiliates in this Commonwealth.

20 4. The place where and the date when the organization was
21 legally established, the form of its organization, and a reference to
22 any determination of its tax-exempt status under the Internal Revenue
23 Code.

24 5. The names and addresses of the officers, directors, trustees
25 and the principal salaried executive staff officer.

26 6. A copy of a balance sheet and income and expense statement,
27 with the opinion of any independent public accountant, for the
28 organization's immediately preceding fiscal year, or a copy of a

1 financial statement certified by an independent public accountant
2 covering, in a consolidated report, complete information as to all the
3 preceding year's fund-raising activities of the charitable
4 organization, showing kind and amount of funds raised, fund-raising
5 expenses and allocation of disbursement of funds raised. The report
6 required by this subdivision shall comply with the accounting
7 standards prescribed pursuant to § 57-53. Any organization with gross
8 revenue of less than \$25,000 may submit a balance sheet and income and
9 expense statement verified under oath or affirmation by the treasurer
10 of the organization.

11 7. A statement showing the computation of the percentages
12 provided for in § 57-58.

13 8. A statement indicating whether the organization intends to
14 solicit contributions from the public directly or have such done on
15 its behalf by others.

16 9. A statement indicating whether the organization is authorized
17 by any other governmental authority to solicit contributions and
18 whether it, or any officer, professional fund-raiser or professional
19 solicitor thereof, is or has ever been enjoined by any court or
20 otherwise prohibited from soliciting contributions in any
21 jurisdiction.

22 10. The general purpose or purposes for which the contributions
23 to be solicited shall be used.

24 11. The name or names under which it intends to solicit
25 contributions.

26 12. The names of the individuals or officers of the organization
27 who will have final responsibility for the custody of the
28 contributions.

1 13. The names of the individuals or officers of the organization
2 responsible for the final distribution of the contributions.

3 14. A statement indicating whether the organization, or any
4 officer, professional fund-raiser or professional solicitor thereof,
5 has ever been convicted of a felony and, if so, a description of the
6 pertinent facts.

7 ~~(b)~~ B. Each chapter, branch or affiliate, except an independent
8 member agency of a federated fund-raising organization, shall
9 separately report the information required by this section or report
10 the information to its parent organization which shall then furnish
11 such information as to itself and all of its state affiliates,
12 chapters and branches in a consolidated form. All affiliated
13 organizations included in a consolidated registration statement shall
14 be considered as one charitable organization for all purposes of this
15 chapter. If a consolidated registration statement is filed, all
16 statements thereafter filed shall be upon the same basis unless
17 permission to change is granted by the Commissioner.

18 ~~(e)~~ C. Each federated fund-raising organization shall report
19 the information required by this section in a consolidated form. Any
20 federated fund-raising organization may elect to exclude from its
21 consolidated report information relating to the separate fund-raising
22 activities of all of its independent member agencies. No member agency
23 of a federated fund-raising organization shall be required to report
24 separately any information contained in such a consolidated report.
25 Any separate solicitations campaign conducted by, or on behalf of, any
26 such member agency shall nevertheless be subject to all other
27 provisions of this chapter.

28 ~~(d)~~ D. The registration forms shall be verified under oath or

1 affirmation by the chief fiscal officer and by another authorized
2 officer of the charitable organization.

3 ~~(e)~~ E. Every charitable organization which submits an
4 independent registration to the Commissioner shall pay an annual
5 registration fee of (i) \$30 if its gross contributions for the
6 preceding year do not exceed \$25,000; (ii) \$50 if its gross
7 contributions exceed \$25,000 but do not exceed \$50,000; (iii) \$100 if
8 its gross contributions exceed \$50,000 but do not exceed \$100,000;
9 (iv) \$200 if its gross contributions exceed \$100,000 but do not exceed
10 \$500,000; (v) \$250 if its gross contributions exceed \$500,000 but do
11 not exceed \$1 million; and (vi) \$325 if its gross receipts exceed \$1
12 million. ~~The fees provided for in this subsection shall remain in~~
13 ~~effect until June 30, 1988.~~ A parent organization filing on behalf of
14 one or more chapters, branches or affiliates or a federated
15 fund-raising organization filing on behalf of its member agencies
16 shall pay a single annual registration fee for itself and such
17 chapters, branches, affiliates or member agencies included in the
18 registration statement. Organizations with no prior financial history
19 filing an initial registration shall be required to pay an initial fee
20 of \$100. Organizations with prior financial history filing an initial
21 registration shall be required to pay an initial fee of \$100 in
22 addition to the annual registration fee. Any organization which allows
23 its registration to lapse, without requesting an extension of time to
24 file, shall be required to resubmit an initial registration. An
25 extension may be granted upon receipt of a written request.

26 § 57-52. Publication of warnings concerning certain charitable
27 and civic organizations.--If the Commissioner ~~shall determine~~
28 determines that any charitable or civic organization not registered

1 with his office and not exempt from registration, irrespective of
 2 whether such organization is subject to the jurisdiction of this
 3 Commonwealth, ~~is~~ has solicited or may be soliciting in this
 4 Commonwealth, directly or indirectly, by any means including without
 5 limitation, by telephone or telegraph, by direct mail or by
 6 advertising in national media, he may, after ~~ten~~ five days' written
 7 notice mailed to the charitable or civic organization, cause to be
 8 printed in one or more newspapers published in this Commonwealth a
 9 notice in substantially the following form:

10 WARNING - UNREGISTERED CHARITABLE SOLICITATION

11 The organization named below has solicited contributions from
 12 Virginia citizens for allegedly charitable purposes. It has not
 13 registered with or been granted the appropriate exempt status by the
 14 Commissioner as required by law. Contributors are cautioned that
 15 their contributions to such organization may be used for noncharitable
 16 purposes.

17 § 57-54. Contracts between charitable or civic organizations and
 18 professional fund-raising counsel or professional solicitors.-- (a)
 19 A. Every contract or agreement between professional fund-raising
 20 counsel and a charitable or civic organization must be in writing and
 21 shall be filed with the Commissioner within ten days after such
 22 contract or written agreement is entered into.

23 ~~(b)~~ B. Every contract, or a written statement of the nature of
 24 the arrangement to prevail in the absence of a contract, between a
 25 professional solicitor and a charitable or civic organization shall be
 26 filed with the Commissioner ~~within~~ at least ten days after such
 27 prior to commencement of the contract is entered into or such
 3 arrangement is agreed to .

1 ~~(e)~~ C. All agreements and arrangements between professional
2 fund-raising counsel and charitable or civic organizations must be
3 reduced to writing before executed or acted upon.

4 § 57-55.1. Charitable solicitation disclosure.--It shall be a
5 violation of this chapter for a professional solicitor to solicit
6 contributions from a ~~prespective~~ potential donor in this Commonwealth
7 without ~~fully~~ clearly and conspicuously disclosing to the ~~prespective~~
8 potential donor at the time of solieitation prior to orally
9 requesting a contribution, or contemporaneously with a written request
10 for a contribution, at the point of solicitation, the minimum
11 percentage of any amount contributed which will be received by the
12 charitable or civic organization for its own use ; ~~provided that if~~
13 ~~such perecentage as at least seventy percent no such disclosure need be~~
14 ~~made .~~

15 § 57-57. Prohibited acts.-- ~~(a)~~ A. No charitable organization
16 shall use or exploit the fact of registration under this chapter so as
17 to lead the public to believe that such registration in any manner
18 constitutes an endorsement or approval by this Commonwealth. The use
19 of the following statement shall not be deemed a prohibited
20 exploitation, "Registered with the Commissioner as required by law.
21 Registration does not imply endorsement of a public solicitation for
22 contributions."

23 ~~(b)~~ B. No person shall, in connection with the solicitation of
24 contributions or the sale of tangible personal property or services
25 represent, or lead anyone by any manner, means, practice or device
26 whatsoever to believe, that the person on whose behalf such
27 solicitation or sale is being conducted is a bona fide charitable
28 organization or that the proceeds of such solicitation or sale will be

1 used for charitable purposes, if he has reason to believe such not to
2 be the fact.

3 ~~(e)~~ C. No person shall, in connection with the solicitation of
4 contributions or the sale of tangible personal property or services
5 for charitable purposes, represent or lead anyone by any manner,
6 means, practice or device whatsoever to believe, that any other person
7 sponsors or endorses such solicitation of contributions, sale of
8 tangible personal property or services for charitable purposes or
9 approves of such charitable purposes or a charitable organization
10 connected therewith when such other person has not given written
11 consent to the use of his name for these purposes.

12 Any member of the board of directors or trustees of a charitable
13 organization or any other person who has agreed either to serve or to
14 participate in any voluntary capacity in the campaign shall be deemed
15 thereby to have given his consent to the use of his name in said
16 campaign. Nothing contained in this section shall prevent the
17 publication of names of contributors without their written consents,
18 in an annual or other periodic report issued by a charitable
19 organization for the purpose of reporting on its operations and
20 affairs to its membership or for the purpose of reporting
21 contributions to contributors.

22 ~~(d)~~ D. No person shall denominate any membership fee or
23 purchase price of goods or services sold, as a contribution or as a
24 donation or in any other manner represent or imply that the member or
25 the purchaser of such goods or services will be entitled to an income
26 tax deduction for his cost or any portion thereof unless:

27 1. There has been first obtained a A signed opinion of counsel
or an Internal Revenue Service ruling or determination letter holding

1 such cost to be deductible has been obtained ; or

2 2. The member or purchaser is informed in writing that such cost
3 may not be deductible.

4 A charitable organization shall not represent or imply that a
5 contributor thereto will be entitled to an income tax deduction for
6 his contribution unless ~~there shall have been first obtained~~ a signed
7 opinion of counsel or an Internal Revenue Service ruling or
8 determination letter holding gifts to such organization to be ~~so~~
9 deductible has been obtained .

10 ~~(e)~~ E. No person shall make any representation that he is
11 soliciting contributions for or on behalf of a charitable organization
12 or shall use or display any emblem, device or printed matter belonging
13 to or associated with a charitable organization for the purpose of
14 soliciting or inducing contributions from the public without first
15 being authorized to do so by the charitable organization.

16 ~~(f)~~ F. No professional solicitor shall solicit in the name of
17 or on behalf of any charitable or civic organization unless such
18 solicitor has:

19 1. Written authorization of two officers of such organization, a
20 copy of which shall be filed with the Commissioner. Such written
21 authorization shall bear the signature of the solicitor and shall
22 expressly state on its face the period for which it is valid, which
23 shall not exceed one year from the date issued.

24 2. Such authorization with him when making solicitations and
25 exhibits ~~the same~~ it on request to persons solicited, ~~or~~ police
26 officers, or agents of the Commissioner.

27 ~~(g)~~ G. No charitable or civic organization shall accept any
28 contribution exceeding five dollars in cash or tangible property

1 without providing, on request of the donor, a written receipt
2 acknowledging such contribution on behalf of the organization.

3 ~~(h)~~ H. No person, and no organization of which such person is
4 an officer, professional fund-raising counsel or professional
5 solicitor, shall solicit within this Commonwealth if:

6 1. Such person has been convicted in any jurisdiction of
7 embezzlement, larceny or other crime involving the obtaining of money
8 or property by false pretenses or the misapplication of funds
9 impressed with a trust, unless such person has received a pardon for
10 such offense or the public is informed of such conviction in a manner
11 approved in writing by the Commissioner before any solicitation
12 occurs; or

13 2. Such person has ever been enjoined by any court or otherwise
14 prohibited from soliciting in any jurisdiction, unless the
15 Commissioner ~~shall first determine~~ determines in writing that such
16 person is entitled to solicit in such jurisdiction at the time of
17 soliciting within this Commonwealth or that the reason for such
18 injunction or prohibition does not involve moral turpitude.

19 ~~(i)~~ I. No person shall solicit within this Commonwealth for the
20 benefit of any other person located without the Commonwealth, if such
21 other person refuses to supply any information which the Commissioner
22 deems necessary to assure himself that the provisions of this chapter
23 are complied with. A solicitation shall be deemed to be on behalf of
24 every person who or which receives, directly or indirectly, more than
25 ten percent of the gross amount collected.

26 ~~(j)~~ J. No charitable or civic organization shall allow a
27 professional solicitor to solicit on its behalf if the professional
28 solicitor has not registered pursuant to § 57-61.

1 ~~(k)~~ K. No charitable or civic organization, professional
2 fund-raising counsel or professional solicitor shall solicit in this
3 Commonwealth without being duly registered or granted the appropriate
4 exempt status under this chapter.

5 ~~(l)~~ L. No person shall employ in any solicitation or collection
6 of contributions for a charitable purpose any device, scheme or
7 artifice to defraud or obtain money or property by any
8 misrepresentation or misleading statement.

9 ~~(m)~~ M. No officer, agent, director or trustee of any charitable
10 or civic organization, professional fund-raising counsel or
11 professional solicitor shall refuse or fail, after notice, to produce
12 to the Commissioner any books and records of such organization.

13 ~~(n)~~ N. No person shall use or permit the use of the funds
14 raised by a charitable solicitation for any purpose other than the
15 solicited purpose or the general purposes of the charitable or civic
16 organization on whose behalf the solicitation was made.

17 ~~(o)~~ O. No person shall knowingly and willfully make any false
18 statements in any registration application or statement, report or
19 other disclosure required by this chapter.

20 P. No professional solicitor shall solicit on behalf of a
21 charitable or civic organization unless the charitable or civic
22 organization has registered or been granted the appropriate exempt
23 status under this chapter.

24 § 57-61. Registration of professional fund-raising counsels and
25 solicitors.-- ~~(a)~~ A. No person shall act as a professional
26 fund-raising counsel or professional solicitor for a charitable or
27 civic organization, unless he has first registered with the
28 Commissioner. Applications for registration shall be in writing under

1 oath or affirmation in the form prescribed by the Commissioner and
2 contain such information as he may require. The application shall be
3 accompanied by an annual fee of \$100 for the professional fund-raising
4 counsel. The fee for a professional solicitor shall be \$500. Any
5 professional solicitor who fails to register prior to any solicitation
6 shall be required to pay a late filing fee of \$250. It shall be the
7 responsibility of the professional solicitor to file with the
8 Commissioner, within ninety days after completion of a solicitation
9 campaign, a report showing all funds collected and such other
10 information as the Commissioner may require. A partnership or
11 corporation which is a professional fund-raising counsel or
12 professional solicitor, may register for and pay a single fee on
13 behalf of all its members, officers, agents and employees.

14 ~~(b)~~ B. Each professional solicitor shall, at the time of making
15 application, file with and have approved by the Commissioner a bond in
16 which the applicant shall be the principal obligor in the sum of
17 \$20,000 with one or more sureties satisfactory to the Commissioner,
18 whose liability in the aggregate as such sureties will at least equal
19 ~~the said sum \$20,000~~, and maintain ~~said~~ the bond in effect so long
20 as registration is in effect. The bond shall run to the Commonwealth
21 of Virginia for the use of ~~said~~ the bonds in reimbursement for any
22 penalties or losses resulting from malfeasance, nonfeasance or
23 misfeasance in the conduct of solicitation activities. A partnership
24 or corporation which is a professional solicitor may file a
25 consolidated bond on behalf of all its members, officers, agents and
26 employees.

27 ~~(e)~~ C. Each registration shall be valid throughout the
28 Commonwealth of Virginia for a period of one year from the date of

1 issue and may be renewed for additional one-year periods upon written
2 application, under oath or affirmation, in the form prescribed by the
3 Commissioner and the payment of the fee prescribed herein.

4 ~~(d)~~ D. ~~(Pre-campaign contract filing- Solicitation Notice)~~ At
5 least ten days prior to the commencement of each solicitation
6 campaign, the solicitor shall file with the Commissioner a copy of the
7 contract entered into with any charitable or civic organization and
8 shall file a completed "Solicitation Notice" on forms prescribed by
9 the Commissioner. The Solicitation Notice shall be in writing and
10 under oath, and shall include a description of the solicitation event
11 or campaign, the projected starting and ending dates of the campaign,
12 and the location and telephone number from ~~where~~ which the
13 solicitation will be conducted. Copies of all campaign solicitation
14 literature, including the text of any solicitation to be made orally,
15 shall be attached to the Solicitation Notice. The charitable or civic
16 organization on whose behalf the solicitor is acting shall certify
17 that the Solicitation Notice and accompanying material are true and
18 complete.

19 ~~(e)~~ E. ~~(Maintain records)~~ 1. The solicitor shall maintain
20 during each solicitation campaign and for not less than three years
21 after its completion, the following records: (i) the name and address
22 of each contributor and the date and amount of the contribution,
23 provided that the Commissioner shall not disclose this information
24 except to the extent necessary for investigative or law enforcement
25 purposes; (ii) the name and residence address of each employee, agent,
26 or other person involved in the solicitation; (iii) records of all
27 expenses incurred in the course of the solicitation campaign; (iv) the
28 account number and location of all bank accounts where receipts from

1 the campaign will be deposited; and (v) all records required to be
2 maintained by subsection ~~(g)~~ G. .

3 2. If the solicitor sells tickets to an event and represents
4 that tickets will be donated for use by another, the solicitor shall
5 also maintain, for the same period as specified in subdivision 1 of
6 this subsection: (i) the names and addresses of those contributors
7 donating tickets and the number of tickets donated by each
8 contributor; and (ii) the names and addresses of all organizations
9 receiving donated tickets for use by others, including the number of
10 tickets received by each organization.

11 ~~(f)~~ F. ~~(Bank account)~~ All funds collected by the solicitor
12 shall be deposited in a bank account. The bank account shall include
13 the name of the charitable or civic organization with whom the
14 solicitor has contracted. The professional solicitor shall promptly
15 provide to the charitable or civic organization a copy of all monthly
16 bank statements ~~forthwith~~ .

17 ~~(g)~~ G. ~~(Donation of tickets)~~ The solicitor shall not
18 represent, in the course of its solicitation activities, that tickets
19 to events will be donated for use by another, unless it has complied
20 with the following requirements:

21 1. The solicitor shall obtain commitments, in writing, from
22 persons or charitable or civic organizations stating that they will
23 accept donated tickets and specifying the number of tickets they are
24 willing to accept, and

25 2. The solicitor shall solicit and accept no more contributions
26 for donated tickets than the number of ticket commitments it has
27 received from persons or charitable or civic organizations.

28 ~~(h)~~ H. ~~(Amendments to previously filed information)~~ Any change

1 in information filed with the Commissioner pursuant to this section
2 shall be reported in writing to the Commissioner within seven days
3 after the change occurs.

4 § 57-61.1. Time and effect of registration.--A. Registrations by
5 charitable organizations, professional solicitors, and professional
6 fund-raising counsel are effective upon receipt by the Commissioner.

7 B. If the Commissioner at any time determines that (i) the
8 requirements of § 57-49 or § 57-61 have not been met, or (ii) the
9 registrant has violated, within the preceding twelve months, any
10 requirement of §§ 57-54, 57-55.2 or § 57-57 or any regulations adopted
11 pursuant to § 57-66 , then the Commissioner may suspend or revoke the
12 registration by a written case decision made in conformance with the
13 Administrative Process Act (§ 9-6.14:1 et seq.).

14 C. If the Commissioner finds that the public health, safety or
15 welfare require urgent action, and if he also finds reasonable cause
16 to believe that the registrant has failed to comply with § 57-49 or §
17 57-61 or has violated §§ 57-54, 57-55.2 or § 57-57 or any regulations
18 adopted pursuant to § 57-66 , then the Commissioner may provide
19 advance notice of as little as twenty-four hours for the conduct of a
20 hearing under either § 9-6.14:11 or § 9-6.14:12 of the Administrative
21 Process Act.

22

