

HOUSE BILL NO. 1748

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on \_\_\_\_\_)

(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.

27 "Charitable sales promotion" means advertised sales that feature the names of both the commercial  
28 co-venturer and the charitable or civic organization and that state that the purchase or use of the goods,  
29 services, entertainment, or any other thing of value that the commercial co-venturer normally sells will  
30 benefit the charitable or civic organization or its purposes. To qualify as a charitable sales promotion, the  
31 consumer must pay the same price for the thing of value as the commercial co-venturer usually charges  
32 without the charitable sales promotion and the consumer retains the thing of value.

33 "Civic organization" means any local service club, veterans post, fraternal society or association,  
34 volunteer fire or rescue group, or local civic league or association of 10 or more persons not organized for  
35 profit but operated exclusively for educational or charitable purposes as defined in this section, including  
36 the promotion of community welfare, and the net earnings of which are devoted exclusively to charitable,  
37 educational, recreational, or social welfare purposes.

38 "Commercial co-venturer" means any person who (i) is organized for profit, (ii) is regularly and  
39 primarily engaged in trade or commerce, other than in connection with soliciting for charitable or civic  
40 organizations or charitable purposes, and (iii) conducts an advertised charitable sales promotion for a  
41 specified limited period of time.

42 "Commissioner" means the Commissioner of Agriculture and Consumer Services or a member of  
43 his staff to whom he may delegate his duties under this chapter.

44 "Contribution" means any gift, bequest, devise, or other grant of any money, credit, financial  
45 assistance, or property of any kind or value, including the promise to contribute, except payments by the  
46 membership of an organization for membership fees, dues, fines, or assessments, or for services rendered  
47 to individual members, and except money, credit, financial assistance, or property received from any  
48 governmental authority. "Contribution" does not include any donation of blood or any gift made pursuant  
49 to Article 2 (§ 32.1-291.1 et seq.) of Chapter 8 of Title 32.1.

50 "Department" means the Department of Agriculture and Consumer Services.

51 "Federated fund-raising organization" means any federation of independent charitable  
52 organizations that have voluntarily joined together, including but not limited to a United Fund or  
53 Community Chest, for purposes of raising and distributing money for and among themselves and where

54 membership does not confer operating authority and control of the individual agencies upon the federated  
55 group organization.

56 "File with the Commissioner" means depositing the originals of the documents required to be filed,  
57 along with the payment of the appropriate fee and all supporting documents with the Department or  
58 submitting the required documents and any appropriate attachments and fees by utilizing an online filing  
59 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 not  
65 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,  
71 corporation, 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 counsel.

78 "Professional solicitor" means any person who, for a financial or other consideration, solicits  
79 contributions for, or on behalf of, a charitable or civic organization, whether such solicitation is performed  
80 personally or through his agents, servants, or employees or through agents, servants, or employees who

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

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

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

- 94 1. Any oral or written request;
- 95 2. Any announcement to the press, over the radio or television, ~~or~~ by telephone or telegraph, or by  
96 email concerning an appeal or campaign to which the public is requested to make a contribution for any  
97 charitable purpose connected therewith;
- 98 3. The distribution, circulation, posting, or publishing of any handbill, written advertisement, or  
99 other publication that directly or by implication seeks to obtain public support; or
- 100 4. The sale of, offer, or attempt to sell, any advertisement, advertising space, subscription, ticket,  
101 or any service or tangible item in connection with which any appeal is made for any charitable purpose or  
102 where the name of any charitable or civic organization is used or referred to in any such appeal as an  
103 inducement or reason for making any such sale, or when or where in connection with any such sale, any  
104 statement is made that the whole or any part of the proceeds from any such sale will be donated to any  
105 charitable purpose.

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

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

112 **§ 57-51. Nonresident registration.**

113 ~~(a)~~ A. Any unregistered charitable organization, professional fund-raising counsel, or professional  
114 solicitor, having his or its principal place of business ~~without this~~ outside of the Commonwealth or  
115 organized under and by virtue of the laws of a foreign state who or which shall solicit contributions from  
116 people in ~~this~~ the Commonwealth, shall be deemed to have irrevocably appointed the Secretary of the  
117 Commonwealth as his or its agent upon whom may be served any summons, subpoena, subpoena duces  
118 tecum, or other process directed to such charitable organization, or any partner, principal, officer, or  
119 director thereof or to such professional fund-raising counsel or professional solicitor. Service shall be  
120 made by leaving two copies of the process, notice, order, or demand, together with any fee required by  
121 law, in the office of the Secretary of the Commonwealth, together with an affidavit giving the last known  
122 post-office address of the defendant and such service shall be sufficient if notice of such service and a  
123 copy of the process, notice, order, or demand are forthwith sent by registered mail, with return receipt  
124 requested, by the Secretary of the Commonwealth or one of his staff to the defendant at the specified  
125 address. An affidavit by the Secretary of the Commonwealth showing compliance herewith shall be filed  
126 with the papers in the suit, action, or proceeding.

127 ~~(b)~~ B. Any charitable organization, having no office or place of business within ~~this~~ the  
128 Commonwealth and soliciting in ~~this~~ the Commonwealth from ~~without~~ outside of the Commonwealth  
129 solely by email, telephone or telegraph, direct mail, or advertising in national media, and any professional  
130 fund-raising counsel or professional solicitor engaged by such an organization, shall file with the  
131 Commissioner any report ~~which~~ that would otherwise be required of it or request the Commissioner to  
132 determine that such organization is exempt under § 57-50 or § 57-60.

133 § 57-52. Publication of warnings concerning certain charitable and civic organizations.

134 If the Commissioner determines that any charitable or civic organization not registered with his  
135 office and not exempt from registration, irrespective of whether such organization is subject to the  
136 jurisdiction of ~~this~~ the Commonwealth, has solicited or may be soliciting in ~~this~~ the Commonwealth,  
137 directly or indirectly, by any means including without limitation, by email, by telephone or telegraph, by  
138 direct mail, or by advertising in national media, he may, after ~~ten~~ 10 days' written notice mailed to the  
139 charitable or civic organization, cause to be printed on the Department's website and in one or more  
140 newspapers published in ~~this~~ the Commonwealth a notice in substantially the following form:

141 WARNING--UNREGISTERED CHARITABLE SOLICITATION

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

146 § 57-52.1. Publication of warnings concerning solicitation by professional solicitors.

147 If the Commissioner determines that any charitable or civic organization has contracted with a  
148 professional solicitor to solicit on its behalf and that the professional solicitor may be soliciting or has  
149 solicited in ~~this~~ the Commonwealth, directly or indirectly, by any means, including, without limitation, by  
150 email, by telephone or telegraph, by direct mail, or by advertising in national media, and the professional  
151 solicitor has not registered with the Commissioner as required by § 57-61, the Commissioner may, after  
152 five days' written notice mailed to the charitable or civic organization, cause to be printed on the  
153 Department's website and in one or more newspapers published in ~~this~~ the Commonwealth a notice on  
154 substantially the following form:

155 WARNING--UNREGISTERED CHARITABLE SOLICITATION BY PROFESSIONAL  
156 SOLICITOR

157 The charitable or civic organization named below has contracted with a professional solicitor to  
158 solicit on its behalf. The professional solicitor has not registered with the Commonwealth of Virginia as

159 required by law. Contributors are cautioned that their contributions may be used for noncharitable  
160 purposes.

161           **§ 57-54. Contracts between charitable or civic organizations and professional fund-raising**  
162 **counsel or professional solicitors.**

163           A. Every contract or agreement between professional fund-raising counsel and a charitable or civic  
164 organization ~~must~~ shall be in writing and shall be filed with the Commissioner within ~~ten~~ 10 days after  
165 such contract or written agreement is entered into.

166           B. Every contract, or a written statement of the nature of the arrangement to prevail in the absence  
167 of a contract, between a professional solicitor and a charitable or civic organization shall be filed with the  
168 Commissioner at least ~~ten~~ 10 days prior to commencement of the contract.

169           C. All agreements and arrangements between professional fund-raising counsel and charitable or  
170 civic organizations ~~must~~ shall be reduced to writing before executed or acted upon.

171           D. Any contract between a professional solicitor and a charitable or civic organization shall specify  
172 the percentage of gross contributions that the charitable or civic organization will receive or the terms  
173 upon which a determination can be made as to the amount of the gross revenue from the solicitation  
174 campaign that the charitable or civic organization will receive. If a reasonable estimate is used to make  
175 such determination, the contract shall clearly disclose the assumptions or the formula upon which the  
176 estimate is based; however, if a fixed percentage is used, such percentage shall exclude any amount that  
177 the charitable or civic organization is to pay as an expense of the solicitation campaign, including the cost  
178 of any merchandise or services sold. The professional solicitor shall, at the conclusion of a charitable  
179 appeal, provide to the charitable or civic organization a final accounting of all expenditures. Such final  
180 accounting may not be used in violation of any state or federal trade secret laws. The contract shall disclose  
181 the average percentage of gross contributions collected on behalf of charitable or civic organizations that  
182 such organizations received from the professional solicitor for the three years preceding the year in which  
183 the contract was formed. The contract shall also specify that at least every 90 days the professional solicitor  
184 shall provide the charitable or civic organization with access to and use of all information in the  
185 professional solicitor's possession concerning contributors, including the name, mailing address, email

186 address, and telephone number of each contributor and the date and amount of each contribution. A  
187 professional solicitor shall not restrict a charitable or civic organization's use of any such contributor  
188 information.

189 **§ 57-60. Exemptions.**

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

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

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

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

210 4. Organizations that solicit only within the membership of the organization by the members  
211 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 mail,  
214 or advertising in national media, and that have a chapter, branch, or affiliate within the Commonwealth  
215 that has registered with the Commissioner.

216 6. Organizations that have been granted tax-exempt status under § 501(c)(3) of the Internal  
217 Revenue Code and that are organized wholly as Area Health Education Centers in accordance with § 32.1-  
218 122.7.

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

227 8. Civic organizations as defined herein.

228 9. Agencies providing or offering to provide debt management plans for consumers that are  
229 licensed 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  
231 pursuant 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  
233 status 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  
237 Revenue Code and that are organized wholly as regional emergency medical services councils in  
238 accordance with § 32.1-111.4:2.

239 14. Nonprofit organizations that have been granted tax-exempt status under § 501(c)(3) of the  
240 Internal Revenue Code and that solicit contributions only through (i) grant proposals submitted to for-  
241 profit 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  
245 otherwise be exempt from the provisions of this chapter for any year in which it confines its solicitations  
246 in the Commonwealth to five or fewer contiguous cities and counties, and in which it has registered under  
247 the charitable solicitations ordinance, if any, of each such city and county. No organization shall be exempt  
248 under this subsection if, during its next preceding fiscal year, more than 10 percent of its gross receipts  
249 were paid to any person or combination of persons, located outside the boundaries of such cities and  
250 counties, other than for the purchase of real property, or tangible personal property or personal services to  
251 be used within such localities. An organization that is otherwise qualified for exemption under this  
252 subsection that solicits by means of a local publication, or radio or television station, shall not be  
253 disqualified solely because the circulation or range of such medium extends beyond the boundaries of  
254 such cities or counties.

255 C. No charitable or civic organization shall be exempt under this section unless it submits to the  
256 Commissioner, who in his discretion may extend such filing deadline prospectively or retrospectively for  
257 good cause shown, on forms to be prescribed by him, the name, address and purpose of the organization  
258 and a statement setting forth the reason for the claim for exemption. Parent organizations may file  
259 consolidated applications for exemptions for any chapters, branches, or affiliates that they believe to be  
260 exempt from the registration provisions of this chapter. If the organization is exempted, the Commissioner  
261 shall issue a letter of exemption, which may be exhibited to the public. A registration fee of \$10 shall be  
262 required of every organization requesting an exemption after June 30, 1984. The letter of exemption shall  
263 remain in effect as long as the organization continues to solicit in accordance with its claim for exemption.

264 D. Nothing in this chapter shall be construed as being applicable to the American Red Cross or  
265 any of its local chapters.

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