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HOUSE BILL 2115

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State of Washington

53rd Legislature

1993 Regular Session

By Representative G. Fisher; by request of Office of Financial Management

Read first time 4/02/93. Referred to Committee on APPROPRIATIONS.

1 AN ACT Relating to charitable solicitations; amending RCW  
2 19.09.020, 19.09.100, 19.09.190, 19.09.275, 19.09.340, 9.91.130,  
3 42.17.095, and 42.17.243; adding new sections to chapter 19.09 RCW;  
4 repealing RCW 19.09.010, 19.09.065, 19.09.075, 19.09.076, 19.09.078,  
5 19.09.079, 19.09.085, 19.09.095, 19.09.097, 19.09.271, 19.09.315, and  
6 19.09.355; and prescribing penalties.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 **Sec. 1.** RCW 19.09.020 and 1986 c 230 s 2 are each amended to read  
9 as follows:

10 When used in this chapter, unless the context otherwise requires:

11 (1) A "bona fide officer or employee" of a charitable organization  
12 is one (a) whose conduct is subject to direct control by such  
13 organization; (b) who does not act in the manner of an independent  
14 contractor in his or her relation with the organization; and (c) whose  
15 compensation is not computed on funds raised or to be raised.

16 (2) "Charitable organization" means any entity that solicits or  
17 collects contributions from the general public where the contribution  
18 is or is purported to be used to support a charitable activity.  
19 "Charitable" (a) is not limited to its common law meaning unless the

1 context clearly requires a narrower meaning; (b) does not include  
2 religious or political activities; and (c) includes, but is not limited  
3 to, educational, recreational, social, patriotic, legal defense,  
4 benevolent, or health causes.

5 (3) "Compensation" means salaries, wages, fees, commissions, or any  
6 other remuneration or valuable consideration.

7 (4) "Contribution" means the donation, promise or grant, for  
8 consideration or otherwise, of any money or property of any kind or  
9 value which contribution is wholly or partly induced by a solicitation.  
10 Reference to dollar amounts of "contributions" or "solicitations" in  
11 this chapter means in the case of payments or promises to pay for  
12 merchandise or rights of any description, the value of the total amount  
13 paid or promised to be paid for such merchandise or rights less the  
14 reasonable purchase price to the charitable organization of any such  
15 tangible merchandise, rights, or services resold by the organization,  
16 and not merely that portion of the purchase price to be applied to a  
17 charitable purpose.

18 (5) "Cost of solicitation" means and includes all direct and  
19 indirect costs, expenditures, debts, obligations, salaries, wages,  
20 commissions, fees, or other money or thing of value paid or incurred in  
21 making a solicitation. Cost of solicitation does not include the  
22 reasonable purchase price to the charitable organization of any  
23 tangible goods or services resold by the organization as a part of its  
24 fund raising activities.

25 (6) "Entity" means an individual, organization, group, association,  
26 partnership, corporation, agency or unit of state government, or any  
27 combination thereof.

28 (7) "General public" or "public" means any individual located in  
29 Washington state without a membership or other official relationship  
30 with a charitable organization before a solicitation by the charitable  
31 organization.

32 (8) "Independent fund raiser" or "independent fund-raising entity"  
33 means any entity that for compensation or other consideration, plans,  
34 conducts, manages, or administers any drive or campaign in this state  
35 for the purpose of soliciting contributions for or on behalf of any  
36 charitable organization or charitable or religious purpose, or that is  
37 engaged in the business of or is held out to persons in this state as  
38 independently engaged in the business of soliciting contributions for  
39 such purposes, or the business of planning, conducting, managing, or

1 carrying on any drive or campaign in this state for such solicitations.  
2 However, a nonprofit fund raiser or bona fide officer or other employee  
3 of a charitable organization shall not be deemed an independent fund  
4 raiser.

5 (9) "Membership" means that for the payment of fees, dues,  
6 assessments, etc., an organization provides services and confers a bona  
7 fide right, privilege, professional standing, honor, or other direct  
8 benefit, in addition to the right to vote, elect officers, or hold  
9 office. The term "membership" does not include those persons who are  
10 granted a membership upon making a contribution as the result of  
11 solicitation.

12 (10) "Nonprofit fund raiser" means an entity registered as a  
13 nonprofit corporation under Title 24 RCW, or any entity exempt from  
14 federal income tax under section 501(c) of the Internal Revenue Code,  
15 that solicits and receives contributions exceeding five thousand  
16 dollars in any accounting year on behalf of a charitable or religious  
17 organization other than the nonprofit corporation.

18 (11) "Other employee" of a charitable organization means any person  
19 (a) whose conduct is subject to direct control by such organization;  
20 (b) who does not act in the manner of any independent contractor in his  
21 or her relation with the organization; and (c) who is not engaged in  
22 the business of or held out to persons in this state as independently  
23 engaged in the business of soliciting contributions for charitable or  
24 religious purposes.

25 (12) "Parent organization" means that part of a charitable  
26 organization that coordinates, supervises, or exercises control over  
27 policy, fund raising, or expenditures, or assists or advises one or  
28 more chapters, branches, or affiliates of such organization in the  
29 state of Washington.

30 (13) "Political activities" means those activities subject to  
31 chapter 42.17 RCW or the Federal Elections Campaign Act of 1971, as  
32 amended.

33 (14) "Religious activities" means those religious, evangelical, or  
34 missionary activities under the direction of a religious organization  
35 duly organized and operating in good faith that are entitled to receive  
36 a declaration of current tax exempt status for religious purposes from  
37 the United States government and the duly organized branches or  
38 chapters of those organizations.

39 (15) (~~"Secretary" means the secretary of state.~~)

1       ~~(16))~~) "Solicitation" means any oral or written request for a  
2 contribution, including the solicitor's offer or attempt to sell any  
3 property, rights, services, or other thing in connection with which:

4       (a) Any appeal is made for any charitable purpose; or

5       (b) The name of any charitable organization is used as an  
6 inducement for consummating the sale; or

7       (c) Any statement is made that implies that the whole or any part  
8 of the proceeds from the sale will be applied toward any charitable  
9 purpose or donated to any charitable organization.

10       The solicitation shall be deemed completed when made, whether or  
11 not the person making it receives any contribution or makes any sale.

12       Bingo activities, raffles, and amusement games conducted under  
13 chapter 9.46 RCW and applicable rules of the Washington state gambling  
14 commission are specifically excluded and shall not be deemed a  
15 solicitation under this chapter.

16       **Sec. 2.** RCW 19.09.100 and 1986 c 230 s 11 are each amended to read  
17 as follows:

18       The following conditions apply to charitable solicitations (~~as~~  
19 ~~defined by RCW 19.09.020~~):

20       (1) Each person or organization soliciting charitable contributions  
21 shall disclose orally or in writing to each person or organization  
22 solicited:

23       (a) The name of the individual making the solicitation;

24       (b) The name of the charitable organization; and

25       (c) The purpose of the solicitation, and the name of the  
26 organization that will receive the funds contributed(~~;~~ and

27 ~~(d) Whether the charitable organization is or is not properly~~  
28 ~~registered under this chapter, and if registered, that information~~  
29 ~~relating to its financial affairs is available by contacting the office~~  
30 ~~of the secretary of state, giving the secretary's toll-free telephone~~  
31 ~~number, if available)).~~

32       (2) Each person or organization soliciting charitable contributions  
33 shall conspicuously disclose in writing to each person or organization  
34 solicited:

35       (a) If the solicitation is conducted by a charitable organization,  
36 the percentage relationship between (i) the total amount of money  
37 applied to charitable purposes; and (ii) the dollar value of support  
38 received from solicitations and from all other sources received on

1 behalf of the charitable purpose of the organization(~~(, as contained in~~  
2 ~~the organization's most recent solicitation report filed in accordance~~  
3 ~~with RCW 19.09.075(7))~~);

4 (b) If the solicitation is conducted by an independent or nonprofit  
5 fund raiser, the percentage relationship between (i) the amount of  
6 money disbursed to charitable organizations for charitable purposes;  
7 and (ii) the total value of contributions received on behalf of  
8 charitable organizations by the independent or nonprofit fund raiser(~~(,~~  
9 ~~as contained in the fund raiser's most recent solicitation report filed~~  
10 ~~in accordance with RCW 19.09.079(7) or 19.09.078))~~).

11 (3) (~~Each person or organization soliciting charitable~~  
12 ~~contributions by telephone shall make the disclosures required by RCW~~  
13 ~~19.09.100(2) (a) or (b) in writing within five days of the receipt of~~  
14 ~~any contribution. If the person or organization sends any materials to~~  
15 ~~the person or organization solicited before the receipt of any~~  
16 ~~contribution, those materials shall include the disclosures required in~~  
17 ~~RCW 19.09.100(1)(d), and 19.09.100 (2) (a) or (b), whichever is~~  
18 ~~applicable.~~

19 ~~(4))~~ Each person or organization soliciting charitable  
20 contributions shall not represent orally or in writing that:

21 (a) The charitable contribution is tax deductible unless the  
22 charitable organization for which charitable contributions are being  
23 solicited or to which tickets for fund raising events or other services  
24 or goods will be donated, has applied for and received from the  
25 internal revenue service a letter of determination granting tax  
26 deductible status to the charitable organization;

27 (b) The person soliciting the charitable contribution is a  
28 volunteer or words of similar meaning or effect that create the  
29 impression that the person soliciting is not a paid solicitor unless  
30 such person is unpaid for his or her services;

31 (c) The person soliciting the charitable contribution is a member,  
32 staffer, helper, or employee of the charitable organization or words of  
33 similar meaning or effect that create the impression that the person  
34 soliciting is not a paid solicitor if the person soliciting is  
35 employed, contracted, or paid by an independent fund raiser.

36 ~~((5))~~ (4) If the charitable organization is associated with, or  
37 has a name that is similar to, any unit of government each person or  
38 organization soliciting contributions shall disclose to each person  
39 solicited whether the charitable organization is or is not part of any

1 unit of government and the true nature of its relationship to the unit  
2 of government.

3 ~~((+6))~~ (5) A charitable organization shall comply with all local  
4 governmental regulations that apply to soliciting for or on behalf of  
5 charitable organizations.

6 ~~((+7))~~ (6) The advertising material and the general promotional  
7 plan for a solicitation shall not be false, misleading, or deceptive,  
8 and shall afford full and fair disclosure.

9 ~~((+8))~~ (7) Solicitations shall not be conducted by a charitable  
10 organization or independent fund raiser that has, or if a corporation,  
11 its officers, directors, or principals have, been convicted of a crime  
12 involving solicitations for or on behalf of a charitable organization  
13 in this state, the United States, or any other state or foreign country  
14 within the past ten years or has been subject to any permanent  
15 injunction or administrative order or judgment under RCW 19.86.080 or  
16 19.86.090, involving a violation or violations of RCW 19.86.020, within  
17 the past ten years, or of restraining a false or misleading promotional  
18 plan involving solicitations for charitable organizations.

19 Failure to comply with subsections (1) through ~~((+8))~~ (7) of this  
20 section is a violation of this chapter.

21 **Sec. 3.** RCW 19.09.190 and 1986 c 230 s 16 are each amended to read  
22 as follows:

23 Every independent fund raiser who (1) directly or indirectly  
24 receives contributions from the public on behalf of any charitable  
25 organization; or (2) is compensated based upon funds raised or to be  
26 raised, number of solicitations made or to be made, or any other  
27 similar method; or (3) incurs or is authorized to incur expenses on  
28 behalf of the charitable organization(~~(; or (4) has not been registered~~  
29 ~~with the secretary as an independent fund raiser for the preceding~~  
30 ~~accounting year)) shall execute a surety bond as principal with one or  
31 more sureties whose liability in the aggregate as such sureties will  
32 equal at least fifteen thousand dollars. (~~The secretary may, by rule,~~  
33 ~~provide for the reduction and reinstatement of the bond required by~~  
34 ~~this section.))~~~~

35 The issuer of the surety bond shall be licensed to do business in  
36 this state(~~(, and shall promptly notify the secretary when claims or~~  
37 ~~payments are made against the bond. The bond shall be filed with the~~  
38 ~~secretary in the form prescribed by the secretary)). The bond shall~~

1 run to the state and to any person who may have a cause of action  
2 against the obligor of said bond for any malfeasance, misfeasance, or  
3 deceptive practice in the conduct of such solicitation.

4 **Sec. 4.** RCW 19.09.275 and 1986 c 230 s 18 are each amended to read  
5 as follows:

6 Any person who willfully and knowingly violates any provision of  
7 this chapter or who willfully and knowingly gives false or incorrect  
8 information to the (~~secretary,~~) attorney general(~~(,)~~) or county  
9 prosecuting attorney in filing statements required by this chapter,  
10 whether or not such statement or report is verified is guilty of a  
11 gross misdemeanor punishable under chapter 9A.20 RCW.

12 Any person who violates any provisions of this chapter or who gives  
13 false or incorrect information to the (~~secretary,~~) attorney  
14 general(~~(,)~~) or county prosecuting attorney in filing statements  
15 required by this chapter, whether or not such statement or report is  
16 verified, is guilty of a misdemeanor punishable under chapter 9A.20  
17 RCW.

18 **Sec. 5.** RCW 19.09.340 and 1983 c 265 s 12 are each amended to read  
19 as follows:

20 (1) The commission by any person of an act or practice prohibited  
21 by this chapter is hereby declared to be an unfair act or practice or  
22 unfair method of competition in the conduct of trade or commerce for  
23 the purpose of application of the consumer protection act, chapter  
24 19.86 RCW.

25 (~~(2) ((The secretary may refer such evidence, as may be available,~~  
26 ~~concerning violations of this chapter to the attorney general or the~~  
27 ~~prosecuting attorney of the county wherein the alleged violation~~  
28 ~~arose.))~~) In addition to any other action they might commence, the  
29 attorney general or the county prosecuting attorney may bring an action  
30 in the name of the state(~~(, with or without such reference,)~~) against  
31 any person to restrain and prevent the doing of any act or practice  
32 prohibited by this chapter: PROVIDED, That this chapter shall be  
33 considered in conjunction with chapters 9.04 and 19.86 RCW(~~(, as now or~~  
34 ~~hereafter amended, and)).~~) The powers and duties of the attorney  
35 general and the prosecuting attorney as they may appear in ((the  
36 aforementioned)) chapters((,)) 9.04 and 19.86 RCW shall apply against  
37 all persons subject to this chapter.

1        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 19.09 RCW  
2 to read as follows:

3        If it appears to the attorney general that a person has engaged or  
4 is about to engage in an act or practice constituting a violation of a  
5 provision of this chapter or a rule adopted or order issued under this  
6 chapter, the attorney general may, in the attorney general's  
7 discretion, issue an order directing the person to cease and desist  
8 from continuing the act or practice. Reasonable notice of and  
9 opportunity for a hearing shall be given. The attorney general may  
10 issue a temporary order pending the hearing, which shall remain in  
11 effect until ten days after the hearing is held and which shall become  
12 final if the person to whom the notice is addressed does not request a  
13 hearing within fifteen days after the receipt of the notice.

14        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 19.09 RCW  
15 to read as follows:

16        (1) The attorney general may assess against any person or  
17 organization who violates this chapter, or any rule adopted under this  
18 chapter, a civil penalty of not more than one thousand dollars for each  
19 violation.

20        (2) Such person or organization shall be afforded the opportunity  
21 for a hearing, upon request made to the attorney general within thirty  
22 days after the date of issuance of the notice of assessment. The  
23 hearing shall be conducted in accordance with chapter 34.05 RCW.

24        (3) If any person fails to pay an assessment after it has become a  
25 final and unappealable order, or after the court has entered final  
26 judgment in favor of the state, the attorney general may recover the  
27 amount assessed by action in the appropriate superior court. In such  
28 action, the validity and appropriateness of the final order imposing  
29 the penalty shall not be subject to review.

30        **Sec. 8.**    RCW 9.91.130 and 1987 c 385 s 1 are each amended to read  
31 as follows:

32        (1) It is unlawful for any person to throw, drop, deposit, discard,  
33 or otherwise dispose of any trash, including, but not limited to items  
34 that have deteriorated to the extent that they are no longer of  
35 monetary value or of use for the purpose they were intended; garbage,  
36 including any organic matter; or litter, in or around a receptacle  
37 provided by a charitable organization(~~(, as defined in RCW~~



1 ~~19.09.020(2)~~) for the donation of clothing, property, or other thing  
2 of monetary value to be used for the charitable purposes of such  
3 organization.

4 (2) Charitable organizations must post a clearly visible notice on  
5 the donation receptacles warning of the existence and content of this  
6 section and the penalties for violation of its provisions, as well as  
7 a general identification of the items which are appropriate to be  
8 deposited in the receptacle.

9 (3) Any person violating the provisions of this section shall be  
10 guilty of a misdemeanor, and the fine for such violation shall be not  
11 less than fifty dollars for each offense.

12 (4) Nothing in this section shall preclude a charitable  
13 organization which maintains the receptacle from pursuing a civil  
14 action and seeking whatever damages were sustained by reason of the  
15 violation of the provisions of this section. For a second or  
16 subsequent violation of this section, such person shall be liable for  
17 treble the amount of damages done by the person, but in no event less  
18 than two hundred dollars, and such damages may be recovered in a civil  
19 action before any district court judge.

20 **Sec. 9.** RCW 42.17.095 and 1982 c 147 s 8 are each amended to read  
21 as follows:

22 The surplus funds of a candidate, or of a political committee  
23 supporting or opposing a candidate, may only be disposed of in any one  
24 or more of the following ways:

25 (1) Return the surplus to a contributor in an amount not to exceed  
26 that contributor's original contribution;

27 (2) Transfer the surplus to the candidate's personal account as  
28 reimbursement for lost earnings incurred as a result of that  
29 candidate's election campaign. Such lost earnings shall be verifiable  
30 as unpaid salary or, when the candidate is not salaried, as an amount  
31 not to exceed income received by the candidate for services rendered  
32 during an appropriate, corresponding time period. All lost earnings  
33 incurred shall be documented and a record thereof shall be maintained  
34 by the candidate or the candidate's political committee. The committee  
35 shall include a copy of such record when its expenditure for such  
36 reimbursement is reported pursuant to RCW 42.17.090;

37 (3) Transfer the surplus to one or more candidates or to a  
38 political committee or party;

1 (4) Donate the surplus to a charitable organization (~~registered in~~  
2 ~~accordance with chapter 19.09 RCW~~);

3 (5) Transmit the surplus to the state treasurer for deposit in the  
4 general fund; or

5 (6) Hold the surplus in the campaign depository or depositories  
6 designated in accordance with RCW 42.17.050 for possible use in a  
7 future election campaign, for political activity, for community  
8 activity, or for nonreimbursed public office related expenses and  
9 report any such disposition in accordance with RCW 42.17.090:  
10 PROVIDED, That if the candidate subsequently announces or publicly  
11 files for office, information as appropriate is reported to the  
12 commission in accordance with RCW 42.17.040 through 42.17.090. If a  
13 subsequent office is not sought the surplus held shall be disposed of  
14 in accordance with the requirements of this section.

15 **Sec. 10.** RCW 42.17.243 and 1991 sp.s. c 18 s 4 are each amended to  
16 read as follows:

17 (1) Elected and appointed officials required to report under RCW  
18 42.17.240, shall report for themselves and for members of their  
19 immediate family to the commission any contributions received during  
20 the preceding calendar year for the officials' use in defraying  
21 nonreimbursed public office related expenses. Contributions reported  
22 under this section shall be referred to as a "public office fund" and  
23 shall not be transferred to a political committee nor used to promote  
24 or oppose a candidate or ballot proposition, other than as provided by  
25 subsection (3)(a) of this section. Reimbursements or payments for  
26 travel do not constitute contributions for the purposes of this  
27 section.

28 A report shall be filed during the month of January of any year  
29 following a year in which such contributions were received for or  
30 expenditures made from a public office fund. The report shall include:

31 (a) The name and address of each contributor;

32 (b) A description of each contribution, including the date on which  
33 it was received and its amount or, if its dollar value is  
34 unascertainable, an estimate of its fair market value; and

35 (c) A description of each expenditure made from a public office  
36 fund, including the name and address of the recipient, the amount, and  
37 the date of each such expenditure.

1 (2) No report under subsection (1) of this section shall be  
2 required if:

3 (a) The receipt of the contribution has been reported pursuant to  
4 RCW 42.17.065 (continuing political committee reports) or RCW 42.17.090  
5 (political committee reports); or

6 (b) The contribution is in the form of meals, refreshments, or  
7 entertainment given in connection with official appearances or  
8 occasions where public business was discussed.

9 (3) Any funds which remain in a public office fund after all  
10 permissible public office related expenses have been paid may only be  
11 disposed of in one or more of the following ways:

12 (a) Returned to a contributor in an amount not to exceed that  
13 contributor's original contribution; or

14 (b) Donated to a charitable organization (~~registered in accordance~~  
15 ~~with chapter 19.09 RCW~~); or

16 (c) Transferred to the state treasurer for deposit in the general  
17 fund.

18 NEW SECTION. **Sec. 11.** The following acts or parts of acts are  
19 each repealed:

20 (1) RCW 19.09.010 and 1986 c 230 s 1 & 1973 1st ex.s. c 13 s 1;

21 (2) RCW 19.09.065 and 1986 c 230 s 3 & 1983 c 265 s 4;

22 (3) RCW 19.09.075 and 1986 c 230 s 4 & 1983 c 265 s 5;

23 (4) RCW 19.09.076 and 1986 c 230 s 5;

24 (5) RCW 19.09.078 and 1986 c 230 s 6;

25 (6) RCW 19.09.079 and 1986 c 230 s 7 & 1983 c 265 s 15;

26 (7) RCW 19.09.085 and 1986 c 230 s 8 & 1983 c 265 s 8;

27 (8) RCW 19.09.095 and 1986 c 230 s 9 & 1983 c 265 s 6;

28 (9) RCW 19.09.097 and 1986 c 230 s 10;

29 (10) RCW 19.09.271 and 1986 c 230 s 17;

30 (11) RCW 19.09.315 and 1983 c 265 s 17; and

31 (12) RCW 19.09.355 and 1983 c 265 s 18.

--- END ---