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SENATE BILL 5779

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State of Washington

67th Legislature

2022 Regular Session

By Senators Padden and Honeyford

Read first time 01/11/22. Referred to Committee on Law & Justice.

1 AN ACT Relating to oversight of bail funds; amending RCW  
2 19.09.020 and 19.09.075; adding a new section to chapter 19.09 RCW;  
3 adding a new section to chapter 43.09 RCW; and providing an effective  
4 date.

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

6 **Sec. 1.** RCW 19.09.020 and 2020 c 57 s 28 are each amended to  
7 read as follows:

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

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

15 (2) "Bail fund" means a charitable organization that collects  
16 money for the purpose of securing a person's release before trial  
17 with a payment of bail.

18 (3) "Charitable organization" means any entity that solicits or  
19 collects contributions from the general public where the contribution  
20 is or is purported to be used to support a charitable purpose, but  
21 does not include any commercial fund-raiser, commercial fund-raising

1 entity, commercial coventurer, or any fund-raising counsel, as  
2 defined in this section. Churches and their integrated auxiliaries,  
3 and political organizations are not charitable organizations, but all  
4 are subject to RCW 19.09.100 (15) through (18).

5 ~~((3))~~ (4) "Charitable purpose" means any religious, charitable,  
6 scientific, testing for public safety, literary, or educational  
7 purpose or any other purpose that is beneficial to the community,  
8 including environmental, humanitarian, patriotic, or civic purposes,  
9 the support of national or international amateur sports competition,  
10 the prevention of cruelty to children or animals, the advancement of  
11 social welfare, or the benefit of law enforcement personnel,  
12 firefighters, and other persons who protect public safety. The term  
13 "charitable" is used in its generally accepted legal sense and  
14 includes relief of the poor, the distressed, or the underprivileged;  
15 advancement of religion; advancement of education or science;  
16 erecting or maintaining public buildings, monuments, or works;  
17 lessening the burdens of government; lessening neighborhood tensions;  
18 eliminating prejudice and discrimination; defending human and civil  
19 rights secured by law; and combating community deterioration and  
20 juvenile delinquency.

21 ~~((4))~~ (5) "Commercial coventurer" means any individual or  
22 corporation, partnership, sole proprietorship, limited liability  
23 company, limited partnership, limited liability partnership, or any  
24 other legal entity, that:

25 (a) Is regularly and primarily engaged in making sales of goods  
26 or services for profit directly to the general public;

27 (b) Is not otherwise regularly or primarily engaged in making  
28 solicitations in this state or otherwise raising funds in this state  
29 for one or more charitable organizations;

30 (c) Represents to prospective purchasers that, if they purchase a  
31 good or service from the commercial coventurer, a portion of the  
32 sales price or a sum of money or some other specified thing of value  
33 will be donated to a named charitable organization; and

34 (d) Does not ask purchasers to make checks or other instruments  
35 payable to a named charitable organization or any entity other than  
36 the commercial coventurer itself under its regular commercial name.

37 ~~((5))~~ (6) "Commercial fund-raiser" or "commercial fund-raising  
38 entity" means any entity that for compensation or other consideration  
39 directly or indirectly solicits or receives contributions within this  
40 state for or on behalf of any charitable organization or charitable

1 purpose, or that is engaged in the business of, or represents to  
2 persons in this state as independently engaged in the business of,  
3 soliciting or receiving contributions for such purposes. However, a  
4 commercial coventurer, fund-raising counsel, or consultant is not a  
5 commercial fund-raiser or commercial fund-raising entity.

6 ~~((6))~~ (7) "Compensation" means salaries, wages, fees,  
7 commissions, or any other remuneration or valuable consideration.

8 ~~((7))~~ (8) "Contribution" means the payment, donation, or  
9 promise, for consideration or otherwise, of any money or property of  
10 any kind or value which contribution is wholly or partly induced by a  
11 solicitation. Reference to dollar amounts of "contributions" or  
12 "solicitations" in this chapter means in the case of payments or  
13 promises to pay for merchandise or rights of any description, the  
14 value of the total amount paid or promised to be paid for such  
15 merchandise or rights.

16 ~~((8))~~ (9) "Cost of solicitation" means and includes all direct  
17 and indirect costs, expenditures, debts, obligations, salaries,  
18 wages, commissions, fees, or other money or thing of value paid or  
19 incurred in making a solicitation.

20 ~~((9))~~ (10) "Entity" means an individual, organization, group,  
21 association, partnership, corporation, agency or unit of state  
22 government, or any combination thereof.

23 ~~((10))~~ (11) "Fund-raising counsel" or "consultant" means any  
24 entity or individual who is retained by a charitable organization,  
25 for a fixed fee or rate, that is not computed on a percentage of  
26 funds raised, or to be raised, under a written agreement only to  
27 plan, advise, consult, or prepare materials for a solicitation of  
28 contributions in this state, but who does not manage, conduct, or  
29 carry on a fund-raising campaign and who does not solicit  
30 contributions or employ, procure, or engage any compensated person to  
31 solicit contributions, and who does not at any time have custody or  
32 control of contributions. A volunteer, employee, or salaried officer  
33 of a charitable organization maintaining a permanent establishment or  
34 office in this state is not a fund-raising counsel. An attorney,  
35 investment counselor, or banker who advises an individual,  
36 corporation, or association to make a charitable contribution is not  
37 a fund-raising counsel as a result of the advice.

38 ~~((11))~~ (12) "General public" or "public" means any individual  
39 or entity located in Washington state without a membership or other

1 official relationship with a charitable organization before a  
2 solicitation by the charitable organization.

3 ~~((12))~~ (13) "Gross revenue" or "annual gross revenue" means,  
4 for any accounting period, the total value of revenue, excluding  
5 unrealized capital gains, but including noncash contributions of  
6 tangible, personal property received by or on behalf of a charitable  
7 organization from all sources, without subtracting any costs or  
8 expenses.

9 ~~((13))~~ (14) "Membership" means that for the payment of fees,  
10 dues, assessments, etc., an organization provides services and  
11 confers a bona fide right, privilege, professional standing, honor,  
12 or other direct benefit, in addition to the right to vote, elect  
13 officers, or hold office. The term "membership" does not include  
14 those persons who are granted a membership upon making a contribution  
15 as the result of solicitation.

16 ~~((14))~~ (15) "Other employee" of a charitable organization means  
17 any person (a) whose conduct is subject to direct control by such  
18 organization; (b) who does not act in the manner of any independent  
19 contractor in his or her relation with the organization; and (c) who  
20 is not engaged in the business of or held out to persons in this  
21 state as independently engaged in the business of soliciting  
22 contributions for charitable purposes or religious activities.

23 ~~((15))~~ (16) "Political organization" means those organizations  
24 whose activities are subject to chapter 42.17A RCW or the federal  
25 elections campaign act of 1971, as amended.

26 ~~((16))~~ (17) "Religious organization" means those entities that  
27 are not churches or integrated auxiliaries and includes  
28 nondenominational ministries, interdenominational and ecumenical  
29 organizations, mission organizations, speakers' organizations,  
30 faith-based social agencies, and other entities whose principal  
31 purpose is the study, practice, or advancement of religion.

32 ~~((17))~~ (18) "Secretary" means the secretary of state.

33 ~~((18))~~ (19) "Sign" means, with present intent to authenticate  
34 or adopt a record:

35 (a) To execute or adopt a tangible symbol; or

36 (b) To attach to or logically associate with the record an  
37 electronic symbol, sound, or process.

38 ~~((19))~~ (20) (a) "Solicitation" means any oral or written request  
39 for a contribution, including the solicitor's offer or attempt to

1 sell any property, rights, services, or other thing in connection  
2 with which:

3 (i) Any appeal is made for any charitable purpose;

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

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

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

12 (c) "Solicitation" does not include bingo activities, raffles,  
13 and amusement games conducted under chapter 9.46 RCW and applicable  
14 rules of the Washington state gambling commission.

15 (~~(20)~~) (21) "Solicitation report" means the financial  
16 information the secretary requires pursuant to RCW 19.09.075 or  
17 19.09.079.

18 **Sec. 2.** RCW 19.09.075 and 2011 c 199 s 8 are each amended to  
19 read as follows:

20 (1) An application for initial registration and renewal as a  
21 charitable organization must be submitted on the form approved by the  
22 secretary and must contain:

23 (a) The name, address, and telephone number of the charitable  
24 organization;

25 (b) The name(s) under which the charitable organization will  
26 solicit contributions;

27 (c) The name, address, and telephone number of the officers of or  
28 persons accepting responsibility for the charitable organization;

29 (d) The names of the three officers or employees receiving the  
30 greatest amount of compensation from the charitable organization;

31 (e) The purpose of the charitable organization;

32 (f) Whether the organization is exempt from federal income tax;  
33 and if so the organization shall attach to its application a copy of  
34 the letter by which the internal revenue service granted such status;

35 (g) The name and address of the entity that prepares, reviews, or  
36 audits the financial statement of the charitable organization;

37 (h) A solicitation report of the charitable organization for the  
38 preceding, completed accounting year including:

39 (i) The types of solicitations conducted;

1 (ii) The gross revenue received from all sources by or on behalf  
2 of the charitable organization before any expenses are paid or  
3 deducted;

4 (iii) The total value of contributions received from all  
5 solicitations for or on behalf of the charitable organization before  
6 any expenses are paid or deducted;

7 (iv) The total value of funds expended for charitable purposes;  
8 and

9 (v) Total expenses, including expenditures for charitable  
10 purposes, fund-raising costs, and administrative expenses;

11 (i) The name, address, and telephone number of any commercial  
12 fund-raiser retained by the charitable organization; (~~and~~)

13 (j) An irrevocable appointment of the secretary to receive  
14 service of process in noncriminal proceedings as provided in RCW  
15 19.09.305; and

16 (k) Such other information the secretary deems necessary by rule.

17 (2) An application for initial registration and renewal as a bail  
18 fund must contain the information required in subsection (1) of this  
19 section, as well as information about each case where a bail fund  
20 contributed money towards the payment of bail including:

21 (a) The crime charged;

22 (b) The maximum possible penalty of the crime charged;

23 (c) The amount of bail posted; and

24 (d) The percentage of the amount of bail posted that was  
25 contributed by the bail fund.

26 (3) The governing body or committee thereof must review and  
27 accept any financial report that the charitable organization may be  
28 required to file with the office of the secretary.

29 (~~(3)~~) (4) Charitable organizations that are required under  
30 federal tax law to file an annual return in the form 990 series or  
31 any successor series is not required to file a copy of such annual  
32 return with the secretary: PROVIDED, That the charitable organization  
33 complies with all federal tax law requirements with respect to public  
34 inspection of such annual return.

35 (~~(4)~~) (5) The president, treasurer, or comparable officer of  
36 the organization must sign and date the application. The application  
37 must be submitted with a nonrefundable filing fee established in RCW  
38 19.09.062.

39 (~~(5)~~) (6) Charitable organizations required to register and  
40 renew under this chapter must file a notice of change of information

1 within thirty days of any change in the information contained in  
2 subsection (1)(a) through (k) of this section.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.09  
4 RCW to read as follows:

5 Bail funds must publish quarterly reports that include  
6 information about each case that bail funds contributed money towards  
7 the payment of bail. The information about each case must include:  
8 (1) The crime charged; (2) the maximum possible penalty of the crime  
9 charged; (3) the amount of bail posted; (4) the percentage of the  
10 amount of bail posted that was contributed by the bail fund; and (5)  
11 other relevant information. Bail funds must make this information  
12 publicly available on the bail funds' websites. Bail funds must  
13 provide this information to each donor to the bail fund.

14 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.09  
15 RCW to read as follows:

16 The state auditor may conduct an audit of financial and legal  
17 compliance of a bail fund as defined in RCW 19.09.020. Such a  
18 financial audit shall be performed in a manner consistent with this  
19 chapter and may be performed according to an agreed upon procedures  
20 engagement as in the existing 1998 standards of the American  
21 institute of certified public accountants professional standards  
22 section 600.

23 NEW SECTION. **Sec. 5.** This act takes effect July 1, 2022.

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