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**SENATE BILL 5116**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senator Padden

AN ACT Relating to oversight of bail funds; amending RCW 19.09.020 and 19.09.075; adding a new section to chapter 19.09 RCW; and adding a new section to chapter 43.09 RCW.

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

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

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

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

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

(3) "Charitable organization" means any entity that solicits or collects contributions from the general public where the contribution is or is purported to be used to support a charitable purpose, but does not include any commercial fund-raiser, commercial fund-raising entity, commercial coventurer, or any fund-raising counsel, as defined in this section. Churches and their integrated auxiliaries, and political organizations are not charitable organizations, but all are subject to RCW 19.09.100 (15) through (18).

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

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

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

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

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

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

((~~(5)~~)) (6) "Commercial fund-raiser" or "commercial fund‑raising entity" means any entity that for compensation or other consideration directly or indirectly solicits or receives contributions within this state for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of, or represents to persons in this state as independently engaged in the business of, soliciting or receiving contributions for such purposes. However, a commercial coventurer, fund‑raising counsel, or consultant is not a commercial fund-raiser or commercial fund‑raising entity.

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

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

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

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

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

((~~(11)~~)) (12) "General public" or "public" means any individual or entity located in Washington state without a membership or other official relationship with a charitable organization before a solicitation by the charitable organization.

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

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

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

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

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

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

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

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

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

((~~(19)~~)) (20)(a) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

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

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

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

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

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

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

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

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

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

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

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

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

(e) The purpose of the charitable organization;

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

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

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

(i) The types of solicitations conducted;

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

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

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

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

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

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

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

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

(a) The crime charged;

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

(c) The amount of bail posted; and

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

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

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

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

((~~(5)~~)) (6) Charitable organizations required to register and renew under this chapter must file a notice of change of information within thirty days of any change in the information contained in subsection (1)(a) through (k) of this section.

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

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

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

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

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