

Soliciting for Charity in Washington: RCW 19.09

By Putnam Barber, Senior Consultant, Executive Alliance

Note [November 2007]: This document describes the rules and regulations concerning charitable solicitations in Washington and incorporates the changes enacted by the 2007 Legislature in SHB 1777. The boxed paragraphs present changes which have not yet been implemented because the rule-making process has not been completed. The legislation proposing these changes was submitted at the request of the Secretary of State.

Provisions of SHB 1777 that do not require rule making took effect on July 22, 2007. Other changes will come into effect only after the Secretary of State completes the process for revising the Washington Administrative Code per the Administrative Procedures Act.

In the notes below, paragraphs marked with ● are quoted directly from SHB 1777.

RCW 19.09: Washington's Charitable Solicitations Act appears as chapter 19.09 of the Revised Code of Washington; there are also associated rules in the Washington Administrative Code (WAC 434-120-010 to -280). The Act and the WAC regulate four related kinds of activities:

- The act of solicitation of a charitable contribution.
- The fundraising practices of "charitable organizations".
- The business practices of "commercial fundraisers".
- The content of contracts between "commercial fundraisers" and "charitable organizations".

PURPOSES: The purposes of the Act are to “(1) provide citizens of the state of Washington with information relating to persons and organizations who solicit funds from the public for charitable purposes in order to prevent (a) deceptive and dishonest practices in the conduct of soliciting funds for or in the name of charity; and (b) improper use of contributions intended for charitable purposes;

“(2) Improve the transparency and accountability of organizations that solicit funds from the public for charitable purposes; and

“(3) Develop and operate educational programs or partnerships for charitable organizations, board members, and the general public that help build public confidence and trust in organizations that solicit funds from the public for charitable purposes.”

BACKGROUND: The United States Supreme Court ruled, in *Riley v. National Federation of the Blind of North Carolina* (1988), that a state cannot set an upper limit on the percentage of administrative expenses or fundraising costs incurred by a charity; doing so constitutes an infringement on freedom of speech and other protected rights. Donors and state officials nonetheless remain concerned that excessive costs may be incurred in fundraising campaigns in ways that benefit the fundraisers and not the charitable purpose. Washington and several other states accordingly require disclosure by charitable organizations of a ratio calculated on standardized terms between amounts "devoted to charitable purposes" and other expenditures. In 2003, the U.S. Supreme Court (in the *Madigan* decision) upheld the principles of *Riley* and similar decisions while ruling that fundraising firms may be prosecuted for fraud if they mislead potential donors about the amount of their donations that will be used for charitable purposes.

WHAT IS REQUIRED? Most organizations and individuals who solicit support for charitable activities in ways that reach Washington citizens are required to be registered with the Charities Program in the Office of the Secretary of State. This registration and reporting is required whether or not the solicitation originates in Washington state or is on behalf of a Washington organizations. Contracts between commercial fundraisers and their clients must be filed with the

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same office prior to the delivery of any fundraising services. Annual reports are required from organizations that solicit support, whether for themselves or for others. And changes in the registration information must be reported to the Charities Program as they occur.

The law forbids an individual or organization from raising funds using the name of or on behalf of any other person or organization without the written permission of the named beneficiary.

Detailed information about the requirements of the Act and downloadable versions of the required forms are on the Charities Program website at <http://www.secstate.wa.gov/charities/> The mailing address of the Charities Program is:

PO Box 40234
Olympia, WA 98504-0234

WHAT IS EXCLUDED? There are some exemptions and exclusions that limit the application of the Charitable Solicitations Act. The exemptions and exclusions are for the most part narrowly drawn; organizations and individuals not explicitly identified as beyond the scope of the law's requirements should generally assume that they are expected to register and report. There are penalties for failure to do so when required.

- “Churches and their integrated auxiliaries” are excluded from the definition of “charitable organization” and are exempted from most of the requirements of RCW 19.09. (Other sorts of religious organizations are not exempt even when they are closely connected to a church.)
- Fundraising for a named individual (or family) where the entire proceeds are passed on to the beneficiary are exempted from the requirements of the act. (This exemption applies to a campaign to help a family after a fire, for example, or for a child with a rare disease. Such gifts are rarely tax-deductible for the donors and usually do not result in taxable income for the recipients.)
- Fundraising by an entirely volunteer group – i.e., where no-one receives any form of compensation from the group or from the contributions received – that raises less than \$25,000 per year is excluded from the requirement to register and report.
- Political organizations and their fundraising activities are not covered by RCW 19.09.
- Bingo and other games regulated by the Gambling Commission are not considered fundraising activities in the sense of RCW 19.09.
- Requests for membership renewals from existing members and offers of membership that confer rights and privileges (such as golf-club dues) are not charitable solicitations.
- Sales by established retailers that include a promise to make a charitable contribution of a portion of the proceeds (“commercial coventuring”) are not considered fundraising in the sense of RCW 19.09. (Existing regulations suggesting otherwise are scheduled to be repealed.)

The 2007 changes permit the Secretary of State to enter into reciprocal agreements with other states under which each would accept registrations in the other as meeting the requirements of their charitable solicitations laws and regulations. In August 2007, there were no such agreements in force.

An organization that is not required to register and report under the Act may nevertheless submit certain information about itself to the Charities Program so that the organizations will appear in the lists used to respond to inquiries by the public and thus avoid the possibility that a potential donor might assume that the absence of a listing implied some defect in the organization or its work.

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Prior to the adoption of the 2007 amendments, the Act permitted a “parent organization” to file a single report on behalf of its affiliates or subsidiaries. Such filings are no longer permitted; each separate organization must now register independently and file the required reports on its own behalf.

DISCLOSURES: Consistent with its purposes, a major emphasis of the Act is on disclosure, through registration and reporting, of pertinent information by participants in fundraising efforts.

DISCLOSURES BY CHARITABLE ORGANIZATIONS: Most charitable organizations that solicit funds on their own behalf and all who contract with commercial fundraisers to undertake solicitations on their behalf must register with the Secretary of State prior to engaging in fundraising in Washington and annually thereafter. There are some exemptions (listed above). Fees must be paid with these filings and on some other occasions. The fee for initial registration is currently \$20 and for annual renewals \$10. These fees are specified in a rule adopted by the secretary and codified as WAC 434-120-145.

See below for increased fees that will fund the educational program.

DISCLOSURES BY COMMERCIAL FUNDRAISERS: Commercial fundraisers contracting with charitable organizations to conduct campaigns in Washington must register with the Secretary of State prior to engaging in fundraising in the state and annually thereafter. They must also register each fundraising contract with the Secretary of State and provide copies of the contract documents. The fee for initial registration is currently \$250; for annual renewal, \$175; and for fundraising contract filing, \$10. These fees are specified in rules codified as WAC 434-120-240 and -250.

DISCLOSURES IN SOLICITATIONS: RCW 19.09 specifies elements that are required in any solicitation, whether made by a charitable organization on its own behalf or by a fundraiser under contract.

Charitable organizations must identify themselves (and solicitors must give their names) "at the point of solicitation." They must also provide on request the toll-free number of the Secretary of State's charities hotline.

Commercial fundraisers must identify the charity which will benefit from their efforts and provide the name of the solicitor and, on request, the hotline phone number. They must disclose as well that the solicitation is being conducted by a commercial fundraiser, the name of that commercial fundraiser, and that a notice of solicitation is on file with the Secretary of State.

These requirements apply to telephone solicitations, direct mail appeals, and stationary donation boxes or vending machines conveying any sort of charitable appeal.

RCW 19.09.100 regulates solicitations. It forbids telephone solicitations between 9 pm and 8 am and all forms of telephone harassment. It states that “an entity soliciting contributions for a charitable purpose shall not include in any solicitation, or in any advertising material for a solicitation, or in any promotional plan for a solicitation, any statement that is false, misleading, or deceptive.” All solicitations, advertising material, and promotional plans must fully and fairly disclose the identity of the entity on whose behalf the solicitation is made. The law specifically forbids misrepresentation of tax-deductible status, of a relationship with veterans, law enforcement or fire-fighting organizations when soliciting support for such causes, and of the status – volunteer, contractor or employee – of the person making the solicitation. It also bars

from conducting any solicitation anyone who has been found at fault for actions connected to charitable solicitations within ten years by a public body anywhere in the United States.

These restrictions and protections apply to all entities soliciting contributions for charitable purposes, whether or not the solicitations are made by organizations or individuals required by the Act to register and report. Violations are a misdemeanors as defined in RCW 9A.20.021(3) and punishable by jail sentences of up to 90 days and fines of up to \$1,000.

Because churches and integrated auxiliaries are specifically excluded from the definition of charitable organizations, they are exempt from most of these requirements. Three subsections of RCW 19.09.100 are specifically mentioned as applying to churches along with all charitable organizations: §12 – which bars deceptive solicitations (the new language on this subject is quoted above); §15 – which says that any organization (even a church) may only solicit on behalf of another organization if the other organization is properly registered; and §18 – which forbids harassment of donors and potential donors.

REPORTING FINANCIAL INFORMATION: Under 19.09 charitable organizations must report financial information related to their operations and fundraising efforts in registration and annual renewal forms.

For charitable organization, the annual registration or report must be signed by an officer of the organization. The board (or a board committee) must review and accept any financial report that the organization files with the Charities Program. The law also states that “Charitable organizations must also ensure that the financial information included in the filing fairly represents, in all material respects, the financial condition and results of operations of the organization as of, and for, the periods presented to the secretary for filing. If the financial information submitted to the secretary is incorrect in any material way, the charitable organization may be subject to penalties as provided under RCW 19.09.279.” (That section of the RCW allows the secretary to assess civil penalties of up to \$1,000, which can be appealed at a hearing and in court.)

SHB 1777 authorized the secretary “to adopt rules, in accordance with chapter 34.05 RCW [the Administrative Procedures Act], that establish a set of tiered independent financial reporting requirements.” The proposed language describes a general framework for these new rules, as follows:

- The present requirements continue to apply to all reporting organizations.
- Organizations with revenues exceeding an average of \$1 million for the preceding three years are required to have “federal financial reporting forms” (usually Form 990) “completed or reviewed by a third party who normally prepares or reviews the forms in the ordinary course of their business.”
- Organizations with revenues exceeding an average of \$3 million for the preceding three years are also required to submit with their filings an audited financial statement prepared by an independent certified public accountant.

The administrative rule-making process allows for careful work refining the specifics of these new requirements to address the wide variations that exist among the organizations required to register and report under RCW 19.09. In particular, there are some organizations that raise significant amounts of money by means of charitable appeals addressed to Washington citizens who do not, in the normal course of their affairs, file Form 990 or prepare audited financial statements. The rule will offer alternative avenues for satisfying the enhanced reporting requirements in such cases. Rules are adopted after public hearings held by state officials, like the Secretary of State, following a process described in the Administrative Procedures Act.

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Commercial fundraisers must report financial information relating to work performed for their clients annually at the time of renewal of registration under the Act.

Commercial fundraisers must also report all contracts entered into with other commercial fundraisers (whether or not those contracts are also reported by the other parties involved).

All contracts between commercial fundraisers and charitable organizations to be filed with the secretary before any work is done.

REQUIRED CONTRACT PROVISIONS: Safeguards for charitable organizations contracting with commercial fundraisers are provided by a requirement that contracts between commercial fundraisers and their clients contain certain terms and conditions. An outline of these terms and conditions, along with other suggestions about contracting for commercial fundraising services, can be found on the Charities Program website at <http://www.secstate.wa.gov/documentvault/RequiredContentsforFundraisingServiceContractAgreements-1486.pdf>. The Act also requires that commercial fundraisers obtain surety bonds prior to engaging in fundraising work in the state.

PUBLIC INFORMATION: The Secretary of State's office operates a "charities hotline" – 1-800-332-GIVE – which may be called by members of the public to determine whether or not a given charity or fundraiser is registered with the state. When a fundraiser's registration is on file, the staff of the charities hotline will provide the address of its principal office and the "percent of total revenue applied to charitable purpose" as defined in the required annual financial report. (When a commercial fundraiser serves several clients, this report is for the aggregate of all fundraising work done during the reporting year, not for each client separately.) Similar information is available on the secretary's website – www.secstate.wa.gov/charities – and is compiled into occasional reports issued by the office.

ADVISORY COUNCIL; NEW EDUCATIONAL ACTIVITIES; INCREASE IN FEES

In September of 2007, Secretary of State Sam Reed appointed the first group of members to the newly authorized Charitable Advisory Council – Judy Andrews, Gottlieb, Fisher and Andrews (Seattle); Judy Bell, Volunteer Center (Richland); Putnam Barber, Executive Alliance (Seattle); Bruce Eldredge, Northwest Museum of Arts and Culture (Spokane); Sheri Emerson, The Opportunity Council (Bellingham); Sandy Gill, Northwest Nonprofit Resources (Spokane); Nancy Hales, The Hales Group, Inc. (Vancouver); Carolyn Hojaboom, Moss Adams (Seattle); Jeanne Kojis, Nonprofit Network (Vancouver); George Parker, Jewish Federation of Greater Seattle; Bill Simer, McDirmid, Mikkelsen & Secrest (Spokane); Dennis Smith, United Way of Snohomish County (Everett); Scott Washburn, YMCA of Greater Seattle; Jennifer Witherbee, Washington Apple Education Foundation (Wenatchee). At the first meeting of the group, Putnam Barber was elected its chair. In future months, the Council will take up changes in the fee structure, new reporting requirements, and the design of the planned education program.

SHB 1777 permits the secretary to offer, "in conjunction with the attorney general...an education program for charitable organizations, their board members, and the general public. To the extent practicable, the secretary shall consult with the nonprofit and charitable sector and the charitable advisory council...to develop curriculum and other materials intended to educate charitable organizations, their board members, and the general public."

The bill also allows the secretary to adopt a rule to impose additional fees on filings by charitable organizations to fund this education program and place the receipts in "the charitable organization education fund" maintained by the state Treasurer and appropriated solely for the education program.

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OUT-OF-STATE FUNDRAISING: The focus of any Washington-based organization will naturally be on the requirements of the Washington Charitable Solicitations Act. When programs expand to include significant activities in other states, the provisions of those states' laws and regulations pertaining to charitable solicitations will appropriately be of concern. Most states require, as does Washington, registration and reporting by any charitable organization seeking charitable contributions within their boundaries; some states require registration and reporting by fundraising consultants and contractors as well. Under Washington's Charitable Solicitations Act, the Secretary of State may enter into reciprocal agreements with other state charities regulators covering organizations that operate primarily outside Washington and accept filings with charities officials of those states in lieu of registration and reporting in Washington. Further information about other jurisdictions' requirements can be found at <http://www.multistatefiling.org> and <http://www.nasconet.org>.

DEFINITIONS:

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 fundraiser, commercial fund-raising entity, commercial coventurer, or any fund-raising counsel. Churches and their integrated auxiliaries are not charitable organizations, but are subject to RCW 19.09.100 (12), (15), and (18)."

CHARITABLE PURPOSES: The law defines charitable solicitation inclusively. A charitable solicitation is any request including a reference to any charitable purpose. "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." (This language borrowa and extends the language used for a similar purpose in the Internal Revenue Code and IRS regulations.)

COMMERCIAL FUNDRAISERS: "Commercial fund raiser" ... means any entity that for compensation or other consideration within [Washington] directly or indirectly solicits or receives contributions for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of or is held out to persons in [Washington] as independently engaged in the business of soliciting or receiving contributions for such purposes."

The definition also states that merchants who occasionally advertise products by saying that a portion of the purchase price will go to charity ("commercial coventurers") and firms or individuals who provide advice about fundraising but do not conduct fundraising campaigns ("fundraising counsel") are not a commercial fundraisers.

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;

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“(b) Is not otherwise regularly or primarily engaged in making charitable 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.”

Staff in the Office of the Secretary of State have explained that when SHB 1777 takes effect, the present sections of the Washington Administrative Code that apply to commercial coventurers will be repealed following the procedures in the Administrative Procedures Act.

CONTRIBUTIONS: Contributions are defined inclusively. For the purposes of the Act, a contribution is a transfer of something of value which is wholly or partly induced by a charitable solicitation. Purchases of items which are directly related to an organization's charitable purpose – tickets to theatrical performances or school registration fees, for example – are not considered contributions.

In reports covering the proceeds of fundraising campaigns, the amounts reported must include the total of all receipts, including any costs incurred in connection with making it and any expenses (such as meals, space rentals or greens fees) paid to create the event or campaign. This total (the “gross amount received”) must be reported whether or not some part of the proceeds was retained as a fee by the fundraiser or paid by some other party on a charitable organization’s behalf.

FUNDRAISING COUNSEL or FUNDRAISING CONSULTANT means people or organizations who assist charitable organizations in the design of fundraising campaigns. Fees to fundraising counsel may not be computed on a percentage of funds raised or to be raised. Fundraising counsel may plan, advise, consult or prepare materials for a solicitation of contributions in this state, but may not manage, conduct, or carry on a fundraising campaign nor solicit contributions themselves or through employees or third parties with whom the counsel contracts. Also, they may not at any time have custody or control of contributions received.

Volunteers, employees and compensated officers of charitable organizations maintaining a permanent office in Washington cannot be identified as fundraising counsel by the organization they work for. And attorneys, investment counselors and bankers who advise an individual, corporation, or association about charitable contributions are not acting as fundraising counsel when they do so.

MEMBERSHIPS: Membership dues are not contributions when they convey an exclusive right to services or other privileges (for example, access to the organization’s facilities), professional standing or honors. This exclusion does not apply to the use of the term “member” to describe donors, as is done by many museums and other groups; this distinction is parallel to the one used by the department of revenue to determine whether the recipient organizations owes gross receipts (B&O) taxes on the resulting revenue. When an organization routinely calls its contributors “members,” campaigns to expand the number of members of the organization are solicitations as regulated by the Act.

SOLICITATION: An offer or appeal which uses the name of a charitable organization or a recognized charity is a solicitation. An offer of anything for sale which includes a suggestion that completing the transaction will benefit any charitable organization or further any charitable purpose is also a charitable solicitation (unless the offer is made by a commercial coventurer). It

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does not matter whether the suggestion is true or not. It also does not matter whether the offer is accepted or not; the provisions of the Act apply even when the prospective donor declines. Special rules apply to campaigns which include offering to donate event tickets to third parties.

- The text of RCW 19.09 is available online at –
 - <http://apps.leg.wa.gov/RCW/default.aspx?cite=19.09>
 - The text SHB 1777 as passed by the Legislature is at --
<http://www.leg.wa.gov/pub/billinfo/2007-08/Pdf/Bills/House%20Passed%20Legislature/1777-S.PL.pdf>
 - An explanatory text prepared by the Office of the Secretary of State is at –
<http://secstate.wa.gov/charities/>
 - The latest version of this briefing, incorporating notes covering the implementation of SHB 1777, is available at –
<http://www.exec-alliance.org/PublicPolicy/SCW2007.pdf>
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Prepared 11/95, revised 3/96, 2/98, 1/07, 2/07 and 4/23/07; descriptions of legislative proposals for 2007 added 1/07 and revised 2/07; these descriptions revised to reflect the bill as adopted by the Legislature, 4/23/07; the provisions of SHB 1777 that took effect July 22, 2007, were incorporated into the text and other revisions made August 3 and August 21.