

# Soliciting for Charity in Washington: RCW 19.09

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**Introduction<sup>1</sup>:** Anyone who seeks to raise money for a charitable purpose in Washington State needs to understand and comply with the Charitable Solicitations Act. The provisions of the Act may apply to individuals, nonprofit organizations, consultants and firms that assist with fundraising, and anyone else who is involved in this sort of activity in almost any way. The definition of charitable purpose is broad and inclusive. Though some organizations may be exempt from the registration and reporting requirements of the Act, there are requirements affecting the conduct of charitable solicitations that apply to all solicitations and carry penalties for violations. Beyond those who are specifically affected by the Act, there may be interest as well from donors, advisors to nonprofits, and researchers studying a specific organization or the subject of fundraising more generally.

**RCW 19.09<sup>2</sup>:** 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

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<sup>1</sup> May 7, 2009. The informal summary has been prepared to provide general information to anyone interested in charitable solicitations in Washington State. The advice of an experienced professional may be necessary to determine how the requirements of RCW 19.09 and related regulations apply in specific cases. The Secretary of State's website at <http://secstate.wa.gov/charities/> provides information about the Act and downloadable copies of many of the forms used in its administration.

<sup>2</sup> This document describes the rules and regulations concerning charitable solicitations in Washington. It incorporates the changes enacted by the 2007 Legislature as SHB 1777. The legislation proposing these changes was submitted at the request of the Secretary of State. The boxed paragraphs represent changes which have not yet been implemented.

The provisions of SHB 1777 that do not require rule making took effect on July 22, 2007. Other changes came into effect on January 17, 2009 with revisions to the Washington Administrative Code adopted per the Administrative Procedures Act. Further changes, implementing the tiered reporting system explained below, will come into effect January 1, 2010.

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 organizations that solicit funds for charitable purposes to disclose 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.

- Registration and reporting is required whether or not the solicitation originates in Washington State or is on behalf of a Washington organization.
- Contracts between commercial fundraisers and their clients must be filed with the same office prior to the delivery of any fundraising services.
- Annual renewals are required from organizations that solicit support, whether for themselves or for others.
- 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 exempt from the registration requirements of RCW 19.09. The Act specifically says, however, that churches and their integrated auxiliaries are prohibited, as are all solicitors, from engaging in certain practices when soliciting, as listed in RCW 19.09.100 (see below). Other sorts of religious organizations are not exempt even when they are closely connected to a church.
- Fundraising for a named individual where the entire proceeds are passed on to the beneficiary is exempted from the requirements of the act. (This exemption applies, for example, to a campaign to help a specific child suffering from 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 addressed to 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 also exempted from registration under RCW 19.09.

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. No such agreements are currently in force.

An organization that is not required to register and report under the Act may nevertheless provide certain information about itself to the Charities Program. Such 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. There is a fee for registering in this way.

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.

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

**Charitable organizations:** At the point of solicitation, solicitors must give their names, the name of the charitable organization and its principal place of business. The materials must also

include the number of the Secretary of State's charities hotline, or, in person-to-person solicitations, it must be provided on request.<sup>3</sup>

**Commercial fundraisers:** At the point of solicitation, solicitors must give their names, the name of the commercial fundraising entity and identify the charity which will benefit from their efforts. The materials must also include the charities hotline number and note that a notice of solicitation is on file with the Secretary of State; when the solicitation is made in person, the charities hotline number must be provided on request.

**RULES ABOUT SOLICITATIONS:** RCW 19.09.100 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 the registration requirements. However, three subsections of RCW 19.09.100 are specifically mentioned as applying to churches along with all charitable organizations: RCW 19.09.100.12 – which bars deceptive solicitations (the new language on this subject is quoted above); RCW 19.09.100.15 – which says that any organization (even a church) may only solicit on behalf of another organization if the other organization is properly registered; and RCW 19.09.100.18 – 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.

The law 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.) For charitable organizations, 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.

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<sup>3</sup> For callers in Washington State, the number is (800) 332-GIVE; others call (360) 725-0378.

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.” WAC 434-120-107 has been adopted to implement this tiered reporting system.

These rules will take effect January 1, 2010.

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.” The WAC provides a form for use by reviewers to report that this requirement has been met.

Organizations with revenues exceeding an average of \$3 million for the preceding three years are required to submit with their filings an audited financial statement prepared by an independent certified public accountant.

The WAC also provides that an organization may request exemption from that requirement by writing to the Secretary of State if it receives an unusually large gift if otherwise it would not be required to submit a copy of an audit,.

Revenue means total gross revenue, including any fees retained by a commercial fundraiser or other intermediary prior to disbursement to the charity and any expenses (for example, for the rental of a hall) incurred by the charity or others in support of fundraising activities.

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 must be filed with the secretary before any work begins.

**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 a \$15,000 surety bond prior to engaging in fundraising work in the state.

**PUBLIC INFORMATION:** The Secretary of State's office operates a "charities hotline" – 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 Program will provide information regarding the registered entity, including the address of its principal office and the "percent of total revenue applied to charitable purpose" as reported in the required registration. When a commercial fundraiser serves several clients, the financial 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](http://www.secstate.wa.gov/charities) – and is compiled into a report issued annually by the office.

Also on the Secretary of State's website it is possible to search for information about any nonprofit that has filed corporate documents with the State of Washington. Many nonprofit organizations do not solicit charitable contributions and are therefore not required to file the registrations and reports specified by the Charitable Solicitations Act; when incorporated, though, these organizations do file an annual report with the Corporations Division of the Secretary of State's office and information from that report is posted online.

### **NEW EDUCATIONAL ACTIVITIES; INCREASE IN FEES; ADVISORY COMMITTEE**

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." Announcements of upcoming educational programs offered by the Charities Program are made on the Secretary of State's website at <http://www.secstate.wa.gov/charities>.

SHB 1777 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. The Legislature has not enacted permission to collect these new fees.

The Charities Advisory Council consists of representatives of nonprofit organizations from across the state. It meets several times a year. The current members of the council are listed at [http://www.secstate.wa.gov/charities/advisory\\_council.aspx](http://www.secstate.wa.gov/charities/advisory_council.aspx).

**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. 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)." It is important to note that this definition is much broader than the everyday meaning of the word "charity" or "charitable organization." The Charitable Solicitations Act applies to any organization, or for that matter any individual, who asks for a contribution for a charitable purpose. It is not necessary that the asker be a nonprofit, or incorporated, or in business at all; the activity of asking for contributions for charitable purposes is regulated by the Act, no matter who does it.

**CHARITABLE PURPOSE:** In the Charitable Solicitations Act, the definition of charitable purpose borrows and extends the language used for a similar purpose in the Internal Revenue Code and IRS regulations. The text of the Act says “‘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.”

**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;
- “(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.”

**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. 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. Fees to fundraising counsel may not be computed on a percentage of funds raised or to be raised. 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:** The definition of "solicitation" in the Act is very broad and is intended to make sure that the coverage of the Act extends to every sort of communication where the hearer might reasonably conclude that responding to the appeal will advance a charitable purpose. Hence, 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 solicitation (unless the offer is made by a commercial coventurer). Special rules apply to campaigns which include offering to donate event tickets to third parties. It does not matter whether the connection to the charitable purposes is true or not. It also does not matter whether the solicitation is successful; the provisions of the Act apply even when no transaction occurs.

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- The text of RCW 19.09 is available online at – <http://apps.leg.wa.gov/RCW/default.aspx?cite=19.09>
  - The text of WAC 434-120 is available online at – <http://apps.leg.wa.gov/wac/default.aspx?cite=434-120>
  - 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>