

Charitable Solicitations Act, RCW 19.09

Amending RCW 19.09.020, 19.09.075, 19.09.076, 19.09.079, 19.09.085, 19.09.097, 19.09.100, 19.09.210, 19.09.440, repealing RCW 19.09.095, and adding a new section to 19.09 RCW.

RCW 19.09.020

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) "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 ~~(activity)~~ but does not include any commercial fund raiser or commercial fund-raising entity or fundraising counsel as defined in this section. "Charitable" ~~(a) is not limited to its common law meaning unless the context clearly requires a narrower meaning; (b) does not include religious or political activities; and (c) includes, but is not limited to, educational, recreational, social, patriotic, legal defense, benevolent, and health causes.~~

RENUMBER ACCORDINGLY

(3) "Charitable purpose" includes, for the purposes of this chapter, the relief of poverty, the advancement of knowledge or education, the promotion of health, governmental or municipal purpose, and other purposes that are beneficial to the community. Charitable purposes do not include, for the purposes of this chapter, religious or political activities.

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

(4) "Contribution" means the payment, donation, promise, or grant, 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 less the reasonable purchase price to the charitable organization of any such tangible merchandise, rights, or services resold by the organization, and not merely that portion of the purchase price to be applied to a charitable purpose.

(5) "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. Cost of solicitation does not include the reasonable purchase price to the charitable organization of any tangible goods or services resold by the organization as a part of its fund raising activities.

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

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

(8) "Commercial fund raiser" or "commercial fund-raising entity" means any entity that for compensation or other consideration within this state 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 this state as independently engaged in the business of soliciting or receiving contributions for such purposes. However, for purposes of this chapter, "fundraising counsel, as defined under this section," ~~((the following))~~ shall not be deemed a commercial fund raiser or "commercial fund-raising entity" : ~~(a) Any entity that provides fund-raising advice or consultation to a charitable organization within this state but neither directly nor indirectly solicits or receives any contribution for or on behalf of any such charitable organization;~~ ~~(b) fundraising counsel;~~ and ~~((b)) (c) a bona fide officer or other employee of a charitable organization)).~~

(9) "Fundraising Counsel" 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 to only plan, advise, consult or prepare materials for a solicitation of contributions in this state, but who does not manage, conduct, or carry on a fundraising 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 fundraising counsel. An attorney, investment counselor, or banker who advises an individual, corporation or association to make a charitable contribution is not fundraising counsel as a result of the advice.

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(9) "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.

(10) "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 or religious purposes.

RENUMBER ACCORDINGLY ((~~(11) "Parent organization" means that part of a charitable organization that coordinates, supervises, or exercises control over policy, fund raising, or expenditures, or assists or advises one or more related foundations, supporting organizations, chapters, branches, or affiliates of such organization in the state of Washington.~~))

(12) "Political activities" means those activities subject to chapter [42.17](#) RCW or the Federal Elections Campaign Act of 1971, as amended.

(13) "Religious activities" means those religious, evangelical, or missionary activities, under the direction of a religious organization duly organized and operating in good faith, whose sole purpose is religious and is organized and operated exclusively for the study of the advancement of religion, that are entitled to receive a declaration of current tax exempt status for religious purposes from the United States government and the duly organized branches or chapters of those organizations.

(14) "Secretary" means the secretary of state.

(15) "Signed" means hand-written, or, if the secretary adopts rules facilitating electronic filing that pertain to this chapter, in the manner prescribed by those rules.

(16) (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:

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

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

~~(c)~~ (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:

(i) Bingo activities, raffles, and amusement games conducted under chapter [9.46](#) RCW and applicable rules of the Washington state gambling commission ~~are specifically excluded and shall not be deemed a solicitation under this chapter.~~ or

(ii) appeals for funds on behalf of a specific individual named in the solicitation, but only if all of the proceeds of the solicitation are given to or expended for the direct benefit of that individual.

[2002 c 74 § 1; 1993 c 471 § 1; 1986 c 230 § 2; 1983 c 265 § 1; 1979 c 158 § 80; 1977 ex.s. c 222 § 1; 1974 ex.s. c 106 § 1; 1973 1st ex.s. c 13 § 2.]

RCW 19.09.075

Charitable organizations -- Application for registration -- Contents -- Fee -- Veterans' affairs -- Notice, advice.

An application for registration as a charitable organization shall be submitted in the form prescribed by rule by the secretary, containing, but not limited to, the following:

- (1) The name, address, and telephone number of the charitable organization;
- (2) The name(s) under which the organization will solicit contributions;
- (3) The name, address, and telephone number of the officers of or persons accepting responsibility for the organization;
- (4) The names of the three officers or employees receiving the greatest amount of compensation from the organization;
- (5) The purpose of the organization;
- (6)(a) 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; and
- (b) The name and address of the entity that prepares, reviews, or audits the financial statement of the organization;
- (7) A solicitation report of the organization for the preceding accounting year including:

- (a) The ~~((number and))~~ types of solicitations conducted;
- (b) The total dollar value of support received from solicitations and from all other sources received on behalf of the charitable purpose of the charitable organization;
- (c) The total amount of money applied to charitable purposes, fund raising costs, and other expenses;
- (d) The name, address, and telephone number of any commercial fund raiser used by the organization;
- (8) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW [19.09.305](#); and
- (9) The total revenue of the preceding fiscal year.

The solicitation report required to be submitted under subsection (7) of this section shall be in the form prescribed by rule by the secretary, or as agreed to by the secretary and a charitable organization or a group of charitable organizations. ~~((A consolidated application for registration may, at the option of the charitable organization, be submitted by a parent organization for itself and any or all of its related foundations, supporting organizations, chapters, branches, or affiliates in the state of Washington.))~~

The application shall be signed by the president, treasurer, or comparable officer of the organization. The application shall be submitted with a nonrefundable filing fee which shall be in an amount to be established by the secretary by rule. In determining the amount of this application fee, the secretary may consider factors such as the entity's annual budget and its federal income tax status. If the secretary determines that the application is complete, the application shall be filed and the applicant deemed registered.

~~((The secretary shall notify the director of veterans' affairs upon receipt of an application for registration as a charitable organization from an entity that purports to raise funds to benefit veterans of the United States military services. The director of veterans' affairs may advise the secretary and the attorney general of any information, reports, or complaints regarding such an organization.))~~

(10) An audited financial statement prepared in accordance with generally accepted accounting principles, if the charitable organization received total revenue in excess of \$500,000 for its most recent fiscal year. The audited financial statement must bear the opinion of an independent certified public accountant, if the charitable organization received total revenue in excess of \$500,000 for its most recent fiscal year. In preparing the audit, the certified

public accountant must take into consideration capital, endowment or other reserve funds controlled by the charitable organization. A review or compilation does not fulfill state requirements for an audit.

[2002 c 74 § 2; 1993 c 471 § 3; 1986 c 230 § 4; 1983 c 265 § 5.]

RCW 19.09.076

Charitable organizations -- Application for registration -- Exemptions -- Rules -- Compliance with conditions.

The application requirements of RCW [19.09.075](#) do not apply to the following:

(1) Any charitable organization raising less than an amount as set by rule adopted by the secretary in any accounting year when all the activities of the organization, including all fund raising activities, are carried on by persons who are unpaid for their services and no part of the charitable organization's assets or income inures to the benefit of or is paid to any officer or member of the organization. ~~((;))~~

~~(2) ((Any charitable organization located outside of the state of Washington if the organization files the following with the secretary:~~

~~— (a) The registration documents required under the charitable solicitation laws of the state in which the charitable organization is located;~~

~~— (b) The registration required under the charitable solicitation laws of the state of California and the state of New York; and~~

~~— (c) Such federal income tax forms as may be required by rule of the secretary.))~~

(3) All entities soliciting charitable donations shall comply with the requirements of RCW [19.09.100](#).

[1994 c 287 § 1; 1993 c 471 § 4; 1986 c 230 § 5.]

RCW 19.09.079

Commercial fund raisers -- Application for registration -- Contents -- Fee.

An application for registration as a commercial fund raiser shall be submitted in the form prescribed by the secretary, containing, but not limited to, the following:

(1) The name, address, and telephone number of the commercial fund-raising entity;

(2) The name(s), address(es), and telephone number(s) of the owner(s) and principal officer(s) of the commercial fund-raising entity;

(3) The name, address, and telephone number of the individual responsible for the activities of the commercial fund-raising entity in Washington;

RENUMBER ACCORDINGLY (~~4) A list of states and Canadian provinces in which fund raising has been performed;~~)

(5) The names of the three officers or employees receiving the greatest amount of compensation from the commercial fund-raising entity;

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

(7) A solicitation report of the commercial fund-raising entity for the preceding accounting year, including:

(a) The (~~number and~~) types of fund raising services conducted;

(b) The names of charitable organizations required to register under RCW [19.09.065](#) for whom fund raising services have been performed;

(c) The total value of contributions received on behalf of charitable organizations required to register under RCW [19.09.065](#) by the commercial fund raiser, affiliate of the commercial fund raiser, or any entity retained by the commercial fund raiser; and

(d) The amount of money disbursed to charitable organizations for charitable purposes, net of fund raising costs paid by the charitable organization as stipulated in any agreement between charitable organizations and the commercial fund raiser;

(8) The name, address, and telephone number of any commercial fund raiser that was retained in the conduct of providing fund raising services; and

(9) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW [19.09.305](#).

The application shall be signed by an officer or owner of the commercial fund raiser and shall be submitted with a nonrefundable fee in an amount to be established by rule of the secretary. If the secretary determines that the application is complete, the application shall be filed and the applicant deemed registered.

[1993 c 471 § 5; 1986 c 230 § 7; 1983 c 265 § 15.]

~~((RCW 19.09.095~~

~~Subsidiary organizations -- Requirement to register -- Exemptions.~~

~~A charitable organization that is supervised and controlled by a superior or parent organization that is incorporated, qualified to do business, or is doing business within this state shall not be required to register under RCW 19.09.065 if the superior or parent organization files an application, on behalf of its subsidiary, in addition to or as a part of its own application. If an application has been filed by a superior or parent organization, on behalf of the subsidiary organization, the superior or parent organization shall (1) report financial information either separately or in consolidated form for its subsidiary organization(s), and (2) identify the subsidiary organization(s) on whose behalf the application is being submitted, indicating which such organization(s), if any, collected or expended five thousand dollars or more during their fiscal year.)~~

[1986 c 230 § 9; 1983 c 265 § 6.]

RCW 19.09.097

Contract with commercial fund raiser -- Limitations -- Registration form -- Contents -- Copy -- Fee.

(1) No charitable organization may contract with a commercial fund raiser for any fund raising service or activity unless its contract requires that both parties comply with the law and permits officers of the charity reasonable access to: (a) The fund raisers' financial records relating to that charitable organization; and (b) the fund raisers' operations including without limitation the right to be present during any telephone solicitation. In addition, the contract shall specify the amount of raised funds that the charitable organization will receive or the method of computing that amount, the amount of compensation of the commercial fund raiser or the method of computing that amount, and whether the compensation is fixed or contingent.

(2) Before a charitable organization may contract with a commercial fund raiser for any fund raising service or activity, the charitable organization and commercial fund raiser shall complete a registration form. The registration shall be filed by the charitable organization with the secretary, before the commencement of any campaign, in the form prescribed by the secretary, ~~((within five working days of the execution of the contract containing))~~ The registration shall contain, but not be limited to, the following information:

(a) The name and registration number of the commercial fund raiser;

(b) The name of the surety or sureties issuing the bond required by RCW 19.09.190, the aggregate amount of such bond or bonds, the bond number(s), original effective date(s), and termination date(s);

- (c) The name and registration number of the charitable organization;
 - (d) The name of the representative of the commercial fund raiser who will be responsible for the conduct of the fund raising;
 - (e) The type(s) of service(s) to be provided by the commercial fund raiser;
 - (f) The dates such service(s) will begin and end;
 - (g) The terms of the agreement between the charitable organization and commercial fund raiser relating to:
 - (i) Amount or percentages of amounts to inure to the charitable organization;
 - (ii) Limitations placed on the maximum amount to be raised by the fund raiser, if the amount to inure to the charitable organization is not stated as a percentage of the amount raised;
 - (iii) Costs of fund raising that will be the responsibility of the charitable organization, regardless of whether paid as a direct expense, deducted from the amounts disbursed, or otherwise; and
 - (iv) The manner in which contributions received directly by the charitable organization, not the result of services provided by the commercial fund raiser, will be identified and used in computing the fee owed to the commercial fund raiser; and
 - (h) The names of any entity to which more than ten percent of the total anticipated fund raising cost is to be paid, and whether any principal officer or owner of the commercial fund raiser or relative by blood or marriage thereof is an owner or officer of any such entity.
- (3) A correct copy of the contract shall be filed with the secretary before the commencement of any campaign.
- (4) The registration form shall be submitted with a nonrefundable filing fee in an amount to be established by rule of the secretary and shall be signed by an owner or principal officer of the commercial fund raiser and the president, treasurer, or comparable officer of the charitable organization.

[1993 c 471 § 7; 1986 c 230 § 10.]

RCW 19.09.100

Conditions applicable to solicitations.

The following conditions apply to solicitations as defined by RCW [19.09.020](#):

(1) A charitable organization, whether or not required to register pursuant to this chapter, that directly solicits contributions from the public in this state shall make the following clear and conspicuous disclosures at the point of solicitation:

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

(b) The identity of the charitable organization and the city of the principal place of business of the charitable organization;

(c) If requested by the solicitee, the published number in the office of the secretary for the donor to obtain additional financial disclosure information on file with the secretary.

(2) A commercial fund raiser shall clearly and conspicuously disclose at the point of solicitation:

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

(b) The name of the entity for which the fund raiser is an agent or employee and the name and city of the charitable organization for which the solicitation is being conducted; and

(c) If requested by the solicitee, the published number in the office of the secretary for the donor to obtain additional financial disclosure information on file with the secretary. The disclosure must be made during an oral solicitation of a contribution, and at the same time at which a written request for a contribution is made.

(3) A person or organization soliciting charitable contributions by telephone shall make the disclosures required under subsection (1) or (2) of this section in the course of the solicitation but prior to asking for a commitment for a contribution from the solicitee, and in writing to any solicitee that makes a pledge within five working days of making the pledge. If the person or organization sends any materials to the person or organization solicited before the receipt of any contribution, those materials shall include the disclosures required in subsection (1) or (2) of this section, whichever is applicable.

(4) In the case of a solicitation by advertisement or mass distribution, including posters, leaflets, automatic dialing machines, publication, and audio or video broadcasts, it shall be clearly and conspicuously disclosed in the body of the solicitation material that:

(a) The solicitation is conducted by a named commercial fund raiser, if it is;

(b) The notice of solicitation required by the charitable solicitation act is on file with the secretary's office; and

(c) The potential donor can obtain additional financial disclosure information at a published number in the office of the secretary.

(5) A container or vending machine displaying a solicitation must also display in a clear and conspicuous manner the name of the charitable organization for which funds are solicited, the name, business address, and telephone number of the individual and any commercial fund raiser responsible for collecting funds placed in the containers or vending machines, and the following statement: "This charity is currently registered with the secretary's office under the charitable solicitation act, registration number"

(6) A commercial fund raiser shall not represent that tickets to any fund raising event will be donated for use by another person unless all the following requirements are met:

(a) The commercial fund raiser prior to conducting a solicitation has written commitments from persons stating that they will accept donated tickets and specifying the number of tickets they will accept;

(b) The written commitments are kept on file by the commercial fund raiser for three years and are made available to the secretary, attorney general, or county prosecutor on demand;

(c) The contributions solicited for donated tickets may not be more than the amount representing the number of ticket commitments received from persons and kept on file under (a) of this subsection; and

(d) Not later than seven calendar days prior to the date of the event for which ticket donations are solicited, the commercial fund raiser shall give all donated tickets to the persons who made the written commitments to accept them.

(7) Each person or organization soliciting charitable contributions shall not represent orally or in writing that:

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

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

(c) The person soliciting the charitable contribution is a member, staffer,

helper, or employee of the charitable organization or words of similar meaning or effect that create the impression that the person soliciting is not a paid solicitor if the person soliciting is employed, contracted, or paid by a commercial fund raiser.

(8) If the charitable organization is associated with, or has a name that is similar to, any unit of government each person or organization soliciting contributions shall disclose to each person solicited whether the charitable organization is or is not part of any unit of government and the true nature of its relationship to the unit of government. This subsection does not apply to a foundation or other charitable organization that is organized, operated, or controlled by or in connection with a registered public charity, including any governmental agency or unit, from which it derives its name.

(9) No person may, in conducting any solicitation, use the name "police," "sheriff," "fire fighter," "firemen," or a similar name unless properly authorized by a bona fide police, sheriff, or fire fighter organization or police, sheriff, or fire department. A proper authorization shall be in writing and signed by two authorized officials of the organization or department and shall be filed with the secretary.

(10) A person may not, in conducting any solicitation, use the name of a federally chartered or nationally recognized military veterans' service organization as determined by the United States veterans' administration unless authorized in writing by the highest ranking official of that organization in this state.

(11) A charitable organization shall comply with all local governmental regulations that apply to soliciting for or on behalf of charitable organizations.

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

(13) Solicitations shall not be conducted by a charitable organization or commercial fund raiser that has, or if a corporation, its officers, directors, or principals have, been convicted of a crime involving solicitations for or on behalf of a charitable organization in this state, the United States, or any other state or foreign country within the past ten years or has been subject to any permanent injunction or administrative order or judgment under RCW [19.86.080](#) or [19.86.090](#), involving a violation or violations of RCW [19.86.020](#), within the past ten years, or of restraining a false or misleading promotional plan involving solicitations for charitable organizations.

(14) No charitable organization or commercial fund raiser subject to this chapter may use or exploit the fact of registration under this chapter so as to lead

the public to believe that registration constitutes an endorsement or approval by the state, but the use of the following is not deemed prohibited: "Currently registered with the Washington state secretary of state as required by law. Registration number"

(15) No entity may engage in any solicitation for contributions for or on behalf of any charitable organization or commercial fund raiser unless the charitable organization or commercial fund raiser is currently registered with the secretary.

(16) No entity may engage in any solicitation for contributions unless it complies with all provisions of this chapter.

(17)(a) No entity may (~~place a telephone call~~) contact a donor, or potential donor, for the purpose of charitable solicitation that will be received by the solicitee before eight o'clock a.m. or after nine o'clock p.m.

(b) No entity may, (~~while placing a telephone call~~) when contacting a donor, or potential donor, for the purpose of charitable solicitation, engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the telephone call.

(18) Failure to comply with subsections (1) through (17) of this section is a violation of this chapter.

[1994 c 287 § 2; 1993 c 471 § 9; 1986 c 230 § 11; 1983 c 265 § 9; 1982 c 227 § 7; 1977 ex.s. c 222 § 6; 1974 ex.s. c 106 § 3; 1973 1st ex.s. c 13 § 10.]

RCW 19.09.210
Financial statements.

Upon the request of the attorney general, secretary of state, or the county prosecutor, a charitable organization or commercial fund raiser shall submit a financial statement containing, but not limited to, the following information:

(1) The gross amount of the contributions pledged and the gross amount collected.

(2) The amount thereof, given or to be given to charitable purposes represented together with details as to the manner of distribution as may be required.

(3) The aggregate amount paid and to be paid for the expenses of such solicitation.

(4) The amounts paid to and to be paid to commercial fund raisers or charitable organizations.

(5) Copies of any annual or periodic reports furnished by the charitable organization, of its activities during or for the same fiscal period, to its parent organization, subsidiaries, or affiliates, if any.

[1993 c 471 § 12; 1986 c 230 § 13; 1983 c 265 § 10; 1982 c 227 § 10; 1977 ex.s. c 222 § 10; 1975 1st ex.s. c 219 § 1; 1973 1st ex.s. c 13 § 21.]

RCW 19.09.440

Annual report by secretary of state.

(1) Annually, the secretary of state shall publish a report indicating:

(a) For each charitable organization registered under RCW [19.09.065](#) the percentage relationship between (i) the total amount of money applied to charitable purposes; and (ii) the dollar value of total expenditures, including the total amount of money applied to charitable purposes, fundraising costs and administrative expenses (~~support received from solicitations and received from all other sources on behalf of the charitable purpose of the organization~~);

(b) For each commercial fund raiser registered under RCW [19.09.065](#) the percentage relationship between (i) the amount of money disbursed to charitable organizations for charitable purposes; and (ii) the total value of contributions received on behalf of charitable organizations by the commercial fund raiser; and

(c) Such other information as the secretary of state deems appropriate.

(2) The secretary of state may use the latest information obtained pursuant to RCW [19.09.075](#) or otherwise under chapter [19.09](#) RCW to prepare the report.

[1993 c 471 § 42.]

NEW SECTION

Officers and directors of charitable organizations that received revenue in excess of \$500,000 are responsible for ensuring that boards have reviewed and accepted the financial filings submitted to the Secretary for filing, including any audits that a charity may be required to perform and file. Officer and directors of charitable organizations are also responsible for ensuring that the financial information included in the filing fairly represents, in all material respects, the financial condition and results of operations of the charity 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 officers and directors responsible for the charity may be subject to penalties as provided under RCW 19.09.279 of this chapter.

Charitable Trust Act, RCW 11.110

Amending RCW 11.110.051, 11.110.120, 11.110.130, 11.110.and adding new sections to chapter 11.110 RCW

Sec. _____. RCW 11.110.051 and 1997 c 124 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a trustee, as defined by RCW 11.110.020, must register with the secretary of state if, as to a particular charitable trust:

(a) The trustee holds assets in trust, invested for income-producing purposes, exceeding a value established by the secretary of state by rule;

(b) Under the terms of the trust all or part of the principal or income of the trust can or must currently be expended for charitable purposes; and

(c) The trust instrument does not require the distribution of the entire trust corpus within a period of one year or less.

(2) A trustee of a trust, in which the only charitable interest is in the nature of a remainder, is not required to register during any life estate or other term that precedes the charitable interest. This exclusion from registration applies to trusts which have more than one noncharitable life income beneficiary, even if the death of one such beneficiary obligates the trustee to distribute a remainder interest to charity.

(3) For purposes of this section, an asset, including real estate, is not considered to be "invested for income-producing purposes" if the primary purpose of owning the asset is to use it in directly performing a charitable purpose. This is true even if the trust derives income from the property.

~~((3))~~ (4) A trustee of a charitable trust that is not required to register pursuant to this section is subject to all requirements of this chapter other than those governing registration and reporting to the secretary of state.

Sec. _____. RCW 11.110.120 and 1999 c 42 s 632 are each amended to read as follows:

~~((The attorney general))~~ A party authorized under RCW 11.110.130 may institute appropriate proceedings to secure compliance with this chapter and to secure the proper administration of any trust or other relationship to which this chapter applies. ~~((He))~~ The attorney general shall be notified of all judicial proceedings involving or affecting the charitable trust or its administration in

which, at common law, he is a necessary or proper party as representative of the public beneficiaries. The notification shall be given as provided in RCW 11.96A.110, but this notice requirement may be waived at the discretion of the attorney general. The powers and duties of the attorney general provided in this chapter are in addition to his existing powers and duties, and are not to be construed to limit or to restrict the exercise of the powers or the performance of the duties of the attorney general or of any prosecuting attorney which they may exercise or perform under any other provision of law. Except as provided herein, nothing in this chapter shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it.

Sec. _____. RCW 11.110.130 and 1993 c 471 s 33 are each amended to read as follows:

A civil action for a violation of this chapter may be prosecuted only by:

- (1) the attorney general, ~~((or by))~~;
- (2) a prosecuting attorney;
- (3) a trustee or co-trustee, including a director of a corporation holding assets subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes; or
- (4) a person with a vested charitable beneficial interest in the trust.

NEW SECTION. Sec. _____. A new section is added to chapter 11.110 RCW to read as follows:

(1) A party authorized to bring an action under RCW 11.110.130 may recover the actual damages sustained by him or her together with the costs of suit, including reasonable attorney fees and investigative expenses, which shall be awarded if a violation of this chapter is found. Every person who violates the terms of this chapter, or the terms of an injunction imposed pursuant to this chapter, shall forfeit and pay a civil penalty of not more than one hundred thousand dollars for each violation. Judgment for these amounts shall be entered against the trustee or other responsible party, and shall not be paid out of the corpus of any charitable trust unless the court finds that (a) recovery from the trustee or other responsible party would be unlikely, and (b) the action benefited the charitable purpose of the trust such that payment from the corpus would serve the interests of justice.

(2) A trustee or other defendant found not to have violated this chapter shall be awarded costs of suit, including reasonable attorney fees, if the court determines that the suit was commenced without reasonable basis in law and fact.

NEW SECTION Sec. _____. A new section is added to chapter 11.110 RCW to read as follows:

In the enforcement of this chapter, the attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county.

Such assurance of discontinuance shall not be considered an admission of a violation for any purpose; however, proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of this chapter.

NEW SECTION. Sec. _____. A new section is added to chapter 43.10 RCW to read as follows:

(1) There is hereby created the charities enforcement revolving fund in the custody of the state treasurer which shall consist of: Funds appropriated to the revolving fund, funds transferred to the revolving fund pursuant to a court order or judgment as a result of the Attorney General's participation in an action commenced under chapter 11.96A RCW, chapter 11.110 RCW, or chapter 19.09. RCW; gifts or grants made to the revolving fund; and funds awarded to the state or any agency thereof for the recovery of costs and attorney fees in an action commenced by the attorney general under chapter 11.110 RCW or chapter 19.09 RCW. To the extent that such costs constitute reimbursement for expenses directly paid from constitutionally dedicated funds, such recoveries shall be transferred to the constitutionally dedicated fund.

(2) The attorney general is authorized to expend from the charities enforcement revolving fund such funds as are necessary for the payment of costs, expenses and charges incurred in the investigation, preparation, institution and maintenance of actions under chapter 11.110 RCW or chapter 19.09 RCW.