

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 816

BY SENATORS BARRETT, DEEDS, RUCKER, AND TAYLOR

[Originating in the Committee on the Judiciary;

reported February 26, 2024]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §29-19A-1, §29-19A-2, §29-19A-3, §29-19A-4, and §29-19A-5, all relating to
3 the Truth in Giving Act; providing a short title and purpose; defining terms; requiring certain
4 information to be disclosed by thrift operators to donors and customers; specifying manner
5 of disclosure; authorizing the Secretary of State to investigate violations; establishing
6 criminal and civil penalties; providing for deposit of recovered funds; and authorizing
7 Secretary of State to promulgate legislative rules.

Be it enacted by the Legislature of West Virginia:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 19A. TRUTH IN GIVING ACT.

§29-19A-1. Short title; legislative intent.

- 1 (a) This article may be cited as the Truth in Giving Act.
2 (b) The purpose of this article is to provide individuals who donate consumer goods for
3 resale by thrift operators or who purchase consumer goods that have been donated for resale
4 with information about whether their donations are benefiting non-profit charitable organizations
5 or for-profit businesses.

§29-19A-2. Definitions.

- 1 For purposes of this article:
2 (1) "Charitable organization" means any charitable organization, as defined by §29-19-2
3 of this code, which is registered with the Secretary of State pursuant to §29-19-1 et seq. of this
4 code.
5 (2) "Drop box" means any publicly accessible container intended to receive donated
6 consumer goods.
7 (3) "Mobile pickup unit" means any automobile used by a thrift operator to receive donated
8 consumer goods.

9 (4) "501(c)(3) tax-exempt organization" means any organization which is currently tax-
10 exempt as determined by the Internal Revenue Service under the provisions of 26 U.S.C.
11 §501(c)(3).

12 (5) "Thrift operator" means any retailer licensed to conduct business in this state that sells
13 consumer goods that have been obtained by donations.

14 (6) "Thrift sale" means the sale of consumer goods that were received by the thrift operator
15 via donation.

§29-19A-3. Information required to be disclosed to donors and customers; requirements
for signage and documentation.

1 (a) Any thrift operator that is a charitable organization or 501(c)(3) tax-exempt organization
2 and that sells consumer goods that have been obtained via drop boxes, on-site donations at the
3 thrift operator's retail location, mobile pickup units, or at-home pickup shall disclose the name,
4 business address, telephone number of the charitable organization or 501(c)(3) tax-exempt
5 organization for which the donation is made to each donor at the location where donations are
6 made and to each customer at the location where any such thrift sale is made.

7 (b) Any thrift operator that is not is a charitable organization or 501(c)(3) tax-exempt
8 organization and that sells consumer goods that have been obtained via drop boxes, on-site
9 donations at the thrift operator's retail location, mobile pickup units, or at-home pickup shall
10 disclose the following information to each donor at the location where donations are made and to
11 each customer at the location where any such thrift sale is made:

12 (1) The name, business address, and telephone number of the entity that owns the drop
13 box or mobile pickup unit or that is providing at-home pickup of donated consumer goods;

14 (2) The statement: "THIS IS NOT A CHARITY. DONATIONS MADE HERE SUPPORT A
15 FOR-PROFIT BUSINESS."

16 (c) The information required to be disclosed under subsections (a) and (b) of this section
17 shall be provided in the following manner, as applicable:

18 (1) A notice containing the required information shall be clearly and prominently displayed
19 on the front and at least one side of each drop box;

20 (2) A notice containing the required information shall be clearly and prominently displayed
21 at the location where on-site donations are received at the thrift operator's retail location or at a
22 mobile pickup unit;

23 (3) A notice containing the required information shall be provided to a person making a
24 donation via at-home pickup prior to accepting the donated consumer goods; and

25 (4) A notice containing the required information shall be clearly and prominently displayed
26 at the location where customers pay for consumer goods sold at the thrift operator's retail location.

§29-19A-4. Enforcement; criminal penalties; civil penalties.

27 (a) The Secretary of State, upon his or her own motion, or upon complaint of any person
28 using forms prescribed by the Secretary of State, may, if he or she finds reasonable ground to
29 suspect a violation, investigate any thrift operator selling consumer goods that have been
30 obtained via drop boxes, on-site donations at the thrift operator's retail location, mobile pickup
31 units, or at-home pickup to determine whether the thrift operator has violated the provisions of
32 §29-19A-3 of this code.

33 (b) Any person who willfully and knowingly violates §29-19A-3 of this code is guilty of a
34 misdemeanor and, upon conviction thereof, for a first offense, shall be fined an amount not less
35 than \$100 nor more than \$500, or be confined in jail for not more than six months, or be both fined
36 and confined, and for the second and any subsequent offense to pay a fine of not less than \$500
37 nor more than \$1,000, or be confined for not more than one year, or be both fined and confined.

38 (c) Whenever the Secretary of State, Attorney General, or any prosecuting attorney has
39 reason to believe that any thrift operator is soliciting donations or making thrift sales in violation
40 of §29-19A-3 of this code, the Secretary of State, Attorney General, or prosecuting attorney may
41 bring an action in the name of the state against the thrift operator and its officers in the circuit
42 court of the county in which the cause of action arises to enjoin the thrift operator from continuing

43 the violation, or from engaging therein or from doing any acts in furtherance thereof, and for such
44 other relief as the court deems appropriate.

45 (d) Any thrift operator who willfully and knowingly violates §29-19A-3 of this code by
46 employing any device, scheme, artifice, false representation, or promise with intent to defraud or
47 obtain money or other property is guilty of a misdemeanor and, upon conviction thereof, for a first
48 offense, shall be fined not less than \$100 nor more than \$500, or be confined in jail not more than
49 six months, or be both fined and imprisoned; and for a second and any subsequent offense, shall
50 be fined not less than \$500 nor more than \$1,000, or confined in jail not more than one year, or
51 be both fined and confined.

52 (e) Of any funds recovered as provided for in this section and any other funds recovered
53 by the state as the result of an award for damages, penalties, or settlements in enforcing this
54 article, one-half shall be deposited in the state General Revenue Fund and one-half shall be
55 deposited in the service fees and collections account established by §59-2-1 of this code for the
56 operations of the office of the Secretary of State.

§29-19A-5. Rulemaking.

1 The Secretary of State may propose rules for legislative approval pursuant to §29A-3-1 *et*
2 *seq.* of this code to effectuate the purposes of this article.