



**House
Legislative
Analysis
Section**

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SOLICITATIONS: POLICE, OTHERS

House Bill 4396

Sponsor: Rep. Curtis Hertel

Committee: Consumers

Complete to 4-11-91

A SUMMARY OF HOUSE BILL 4396 AS INTRODUCED 2-27-91

The bill would create the Public Safety Solicitation Act to regulate the solicitation of contributions by or on behalf of public safety organizations, meaning those composed of current or former law enforcement officers, fire fighters, or correctional officers. To solicit or receive funds, organizations and professional fund-raisers would have to register with the attorney general; registration and reporting requirements would vary between the two. In contacts with potential contributors, certain disclosures would have to be made and certain misrepresentations would be explicitly forbidden. Telephone solicitations would have to be recorded, and the caller would have to state whether he or she was a sworn public safety officer or member of the organization soliciting the funds. In-person solicitations would have to be made by organization members wearing civilian clothing; the solicitor would be forbidden from collecting contributions. Violations of the bill would be subject to civil fines and remedies similar to those available under the Consumer Protection Act. Certain organizations collecting contributions for slain or injured officers' dependents would be exempted from the bill. A more detailed explanation follows.

Organization registrations. An organization could not solicit or receive solicited contributions without first registering with the attorney general as prescribed by the bill. A registration would cost \$25, and would expire six months after the closing date of the organization's fiscal year; annual renewals also would be \$25. A registration would have to be accompanied by certain information, including information on the planned distributions of solicited funds, by category. For organizations in existence when the bill took effect, the information would have to include information on the previous year's expenditures in various categories.

Professional fund-raiser registrations. A professional fund-raiser would be someone who for compensation planned or conducted (directly or indirectly through paid individual solicitors) a campaign of soliciting contributions for a public safety organization or person (a "person" could be a corporation or other entity, as well as an individual). The registration would have to be accompanied by a \$100,000 surety bond in a form satisfactory to the attorney general. The registration would cost \$200, and would expire six months after the closing date of the fund-raiser's fiscal year; annual renewals also would cost \$200.

Exemptions. An organization would be exempt from the act if its solicitations met all of the following conditions: the purpose was to aid spouses and children of officers who died or were injured in the line of duty and at least 75 percent of the contributions went for this purpose; the organization's membership included officers from the same employer as the slain or injured officer and the solicitations were conducted only within the jurisdiction

of the employer; and, the organization received written approval from the person on whose behalf the contributions were being sought.

Prohibited acts; use of names. An organization or fund-raiser could not use for the purpose of soliciting contributions a name, symbol, or statement that was confusingly close to that used by another organization (however, this prohibition would not apply to a name, symbol, or statement in existence when the bill took effect). Someone whose name, symbol, or statement was used in violation of the bill could sue for actual damages or \$25,000, whichever was greater, plus reasonable attorneys' fees.

Prohibited acts; misrepresentations. Certain misrepresentations would be explicitly forbidden, including leading a person to believe any of the following: that a contribution will lead to special treatment from a public safety organization, or that a failure to contribute would result in unfavorable treatment; that contributions were tax deductible when they were not; that a person was under an obligation to make a contribution; that failure to contribute would adversely affect the person's credit rating; that the solicitor was located somewhere other than his or her actual location; that the solicitor had a connection with an organization or purpose that the solicitor did not actually have; that the person had previously approved or agreed to make a contribution when in fact he or she had not; or, that the contributions were for a purpose other than their actual purpose.

Other prohibitions, requirements. An organization or fund-raiser could not divert solicited funds to a purpose other than that for which they were solicited. An organization or fund-raiser would be prohibited from taking advantage of a person's inability to reasonably protect his or her interests by reason of disability, illiteracy, or inability to understand the terms and conditions of an agreement to contribute.

Telephone solicitations would have to be recorded (and recordings kept for 60 days), and the caller would have to state whether he or she was a sworn public safety officer or member of the organization soliciting the funds. In-person solicitations would have to be made by organization members wearing civilian clothing. A person soliciting contributions in person could not collect contributions.

Disclosures. Each organization and fund-raiser would have to prepare a disclosure statement to be included with all printed material and read over the telephone in contacts with prospective contributors. The disclosure statement would have to identify the organization and its purpose, explain whether the solicitor is a separate organization acting on behalf of a public safety organization, and state the specific purpose or purposes (including political purposes) for which contributions would be used. Invoices also would have to bear this information, along with notification that the solicitor was registered with the attorney general, and that information on the solicitor could be obtained by calling a toll-free telephone number; invoices would have to provide this number. Information on the distribution of funds within specific percentage ranges (required with registrations) would be supplied upon request.

Toll-free number. The attorney general would have to establish a toll-free number that could be called to obtain information on or file complaints against solicitors of contributions under the bill.

Remedies and penalties. A persistent and knowing violation of the act would be subject to a civil fine of up to \$5,000. Violation of an injunction, order, decree, or judgment issued under the bill would be subject to a civil fine of up to \$500 per violation. The attorney general could seek an injunction against a violation of the act, but generally would first have to give the person an opportunity to cease and desist from the alleged violation. The attorney general could accept an assurance of discontinuance of an activity; that assurance would not constitute an admission of guilt and would not be admissible in any other proceeding. The assurance could include an agreement for the person to pay the costs of investigation, for an amount to be held in escrow pending the outcome of an action, or for restitution to an aggrieved person.

The attorney general could ask the court to subpoena a person's records in connection with an investigation under the bill. That information could not be disclosed to the public, but could be shared with other law enforcement officials, disclosed in connection with an enforcement action brought under the bill, or disclosed to a party in a private action under the bill. Falsification of documents or failure to comply with a subpoena would be subject to a civil fine of up to \$5,000.

The attorney general or another person could bring a class action suit for the actual damages caused by a violation of the bill. The court could appoint a receiver or order sequestration of a defendant's assets if it appeared that the defendant was about to dispose of those assets. A class action suit could be brought more than six years after the occurrence of the violation.

A person could sue for injunctive relief or a declaratory judgment, as well as sue for damages of up to the amount of actual damages or \$250, whichever was greater, together with reasonable attorneys' fees. The statute of limitations on such suits would be the same as for class actions, namely six years.

A prosecutor could conduct investigations and institute actions under the bill in the same manner as the attorney general.

Upon commencement of an action by an individual or a prosecutor, the clerk of the court would mail a copy of the complaint to the attorney general. The clerk also would mail to the attorney general copies of judgments, decrees, and orders issued under the bill. Actions by the attorney general or prosecutors under the bill would be exempt from filing fees.

A law enforcement officer would have to help with an investigation under the bill if requested to do so by the attorney general or the prosecutor.

Service of process. An organization or fund-raiser that did not maintain an office in Michigan would be subject to service of process upon its resident agent, if any. If there was

no resident agent, service would be upon the person who had custody of the financial records; if service could not be made in this way, service would be made as provided by law or court rule. A copy of any process served would be mailed to the last known address of the organization or fund-raiser.