

HOUSE BILL No. 4396

February 27, 1991, Introduced by Rebs. Hertel, DeMars, Profit, Dolan, Leland, Niederstadt, McNutt, Strand, Saunders, Olshove, DeBeaussaert, Weeks and Kosteva and referred to the Committee on Consumers.

A bill to regulate the solicitation of contributions by persons affiliated with or organized for the benefit of public safety organizations; to provide for registration and disclosure statements; to prescribe the powers and duties of certain state agencies and local officials; to prohibit certain activities; and to prescribe remedies and penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "public safety solicitation act".

3 Sec. 2. As used in this act:

4 (a) "Contribution" means the promise, grant, or payment of
5 money or property of any kind or value, including promises to
6 pay. Contribution does not include money or property received
7 from a governmental entity or a foundation restricted as to use.
8 Contribution does not include funds collected by an organization

1 exclusively from the members of the organization or payments by
2 members of an organization for bona fide membership fees, dues,
3 fines, assessments, or for services rendered to individual mem-
4 bers, if membership in the organization confers a right, or other
5 direct benefit, other than only membership status.

6 (b) "Person" means an individual, organization, group, asso-
7 ciation, partnership, corporation, trust, professional
8 fund-raiser, or any combination of those entities.

9 (c) "Professional fund-raiser" means a person who for com-
10 pensation or other consideration plans, conducts, manages, or
11 carries on, either directly or through paid individual solici-
12 tors, a drive or campaign of soliciting contributions for or on
13 behalf of a public safety organization or person. An officer or
14 employee of a public safety organization is not a professional
15 fund-raiser unless his or her compensation or salary is based in
16 whole or in part on the amount of funds raised through
17 solicitations.

18 (d) "Public safety organization" or "organization" means any
19 organization, association, union, or conference of current or
20 former law enforcement officers, fire fighters, correctional
21 officers, employees thereof or any other entity that represents
22 itself to be affiliated or associated with such organizations.

23 Sec. 3. (1) An organization shall not solicit contributions
24 within this state, or receive funds solicited within this state
25 on its behalf, without first registering with the attorney
26 general. An organization shall register in writing on a form

1 prescribed by the attorney general. The registration form shall
2 contain all of the following:

3 (a) The name of the organization and the name or names under
4 which it will solicit or receive contributions.

5 (b) The principal address of the organization and the
6 address of all other offices of the organization in this state.
7 If the organization does not maintain a principal office in this
8 state, the registration form shall contain the name and address
9 of the person having custody of its financial records.

10 (c) The location and date when the organization was legally
11 established, the form of its organization, and a reference to any
12 determination of its tax exempt status under the internal revenue
13 code.

14 (d) The names and business addresses of the officers, direc-
15 tors, trustees, the principal executive officer, and, if applica-
16 ble, the resident agent.

17 (e) The specific areas for which the contributions to be
18 solicited or received will be used. The areas of expenditure
19 shall be broken down into 1 or more of the following categories:

20 (i) Administrative.

21 (ii) Political purposes and campaign contributions.

22 (iii) Membership services.

23 (iv) Charitable contributions.

24 (v) Education and training.

25 (f) If the organization is existing on the effective date of
26 this act or is required by section 5, it shall include a
27 financial statement for the preceding fiscal year that provides

1 the percentage range as required by subsection (2) of the total
2 distributions by the organization in the following expenditure
3 categories:

4 (i) Administrative.

5 (ii) Political purposes and campaign contributions.

6 (iii) Membership services.

7 (iv) Charitable contributions.

8 (v) Education and training.

9 (g) The fiscal year of the organization.

10 (h) A copy of any written consent required under section
11 9(3).

12 (2) The distributions of an organization shall be reported
13 in 1 of the following percentage ranges:

14 (a) 0-10%.

15 (b) 11-25%.

16 (c) 26-50%.

17 (d) 51-75%.

18 (e) 76-100%.

19 (3) The registration form shall be accompanied by a regis-
20 tration fee of \$25.00.

21 (4) The registration shall be effective immediately upon
22 receipt by the attorney general of the completed registration
23 form and the registration fee.

24 (5) A registration filed under this section shall expire 6
25 months after the closing date of the organization's fiscal year.

26 (6) A registration filed under this section may be renewed
27 for additional 1-year periods upon filing of a renewal

1 registration in the form prescribed by the attorney general and
2 payment of a renewal fee of \$25.00 not less than 30 days before
3 the expiration of the existing registration. The information
4 required in the renewal form shall not exceed the information
5 required in subsection (1).

6 Sec. 4. (1) A professional fund-raiser shall not solicit
7 contributions within this state on behalf of an organization or
8 public safety official without first registering with the attor-
9 ney general. The registration shall be in writing on a form pre-
10 scribed by the attorney general.

11 (2) The registration form shall contain the same information
12 as required under section 3(1)(a) to (d). The registration form
13 shall also include the legal name and address of each individual
14 who will for compensation be making or supervising the making of
15 solicitation for contributions.

16 (3) The registration shall be accompanied by a surety bond
17 in the principal sum of \$100,000.00. The bond shall be in a form
18 satisfactory to the attorney general. The professional
19 fund-raiser shall be the obligor on the surety bond of which the
20 surety company shall be the surety. The company shall be quali-
21 fied in this state to write bonds required by this act. The
22 surety bond shall run to the attorney general for the benefit of
23 the people of the state of Michigan for the use of, and may be
24 sued on by, the state or any person who may have a cause of
25 action under this act against the obligor of the bond under this
26 act. The surety bond shall be conditioned that the obligor will
27 faithfully conform to and abide by the provisions of this act.

1 (4) The registration form shall be accompanied by a
2 registration fee of \$200.00.

3 (5) The registration shall be effective immediately upon
4 receipt by the attorney general of the completed registration
5 form, the surety bond, and the registration fee.

6 (6) The registration filed under this section shall expire 6
7 months after the closing date of the public fund-raiser's fiscal
8 year.

9 (7) A registration filed under this section may be renewed
10 for additional 1-year periods upon filing both a renewal regis-
11 tration in the form prescribed by the attorney general, a renewal
12 surety bond, and payment of a renewal fee of \$200.00, not less
13 than 30 days before the expiration of the existing registration.
14 The information required in the renewal form shall not exceed the
15 information required in the initial registration form.

16 (8) A professional fund-raiser shall maintain a list of the
17 address and legal name of each individual who will be making
18 solicitations on behalf of the professional fund-raiser.

19 Sec. 5. An organization or professional fund-raiser shall
20 notify the attorney general within 15 days of any change in the
21 information required to be furnished for registration under this
22 act.

23 Sec. 6. (1) Except as provided in subsection (2), registra-
24 tion forms and documents required to be filed with the attorney
25 general under this act shall be open to public inspection as pro-
26 vided by the freedom of information act, Act No. 442 of the

1 Public Acts of 1976, being sections 15.231 to 15.246 of the
2 Michigan Compiled Laws.

3 (2) The addresses required to be provided under section 4(2)
4 or (8) shall be exempt from the provisions of Act No. 442 of the
5 Public Acts of 1976.

6 Sec. 7. The attorney general shall not accept a registra-
7 tion under this act from an organization or professional
8 fund-raiser located in another state or country without the orga-
9 nization or professional fund-raiser first designating a resident
10 agent in this state for the acceptance of service of process.

11 Sec. 8. (1) An organization or professional fund-raiser
12 which does not maintain an office within this state shall be
13 subject to service of process by service upon its resident agent,
14 or, if there is no resident agent, by service upon the person who
15 has custody of the financial records as designated on the regis-
16 tration form.

17 (2) If service cannot be made as provided in subsection (1),
18 then service may be made as provided by law or court rule.

19 (3) After service is effected by either subsection (1) or
20 (2), a copy of the process shall be mailed to the last known
21 address of the organization or professional fund-raiser.

22 Sec. 9. (1) An organization or professional fund-raiser
23 shall not use for the purpose of soliciting contributions a name,
24 symbol, or statement so closely related or similar to that used
25 by another organization that it would tend to confuse or mislead
26 the public.

1 (2) Subsection (1) does not apply to an organization or
2 professional fund-raiser with a name, symbol, or statement
3 existing on the effective date of this act.

4 (3) An organization or professional fund-raiser shall not
5 use for the purpose of soliciting contributions the name of
6 another person not affiliated with the organization without first
7 obtaining the written consent of the person.

8 (4) A person whose name, symbol, or statement is used in
9 violation of this section may bring an action in the circuit
10 court of the county in which the violation occurs for \$25,000.00
11 or actual damages, whichever is greater, plus reasonable attorney
12 fees.

13 Sec. 10. An organization or professional fund-raiser shall
14 not divert solicited funds to a purpose or purposes other than
15 that for which the funds were contributed or solicited.

16 Sec. 11. (1) An organization or professional fund-raiser
17 shall not, in connection with the solicitation or reception of
18 contributions for or on behalf of an organization or public
19 safety person, misrepresent to, mislead, make false statements
20 to, or use a name other than the solicitor's legal name to
21 another person by any manner that would lead a reasonable person
22 to believe any of the following:

23 (a) That if the person makes a contribution, he or she will
24 receive special benefits or treatment from a public safety orga-
25 nization or that failure to make a contribution will result in
26 unfavorable treatment from a public safety organization.

1 (b) That contributions are tax deductible unless they so
2 qualify under the internal revenue code.

3 (c) That the person is under an obligation to make a
4 contribution.

5 (d) That failure to make a contribution will adversely
6 affect the person's credit rating.

7 (e) That the solicitor is located in a geographic area that
8 is different than the geographic area in which the solicitor is
9 actually located.

10 (f) That the solicitor has a sponsorship, approval, status,
11 affiliation, or connection with an organization or purpose which
12 the solicitor does not actually have.

13 (g) That the person has previously approved or agreed to
14 make a contribution, when in fact the person has not given such
15 approval or agreement.

16 (h) That the contributions are for a purpose that is differ-
17 ent than the actual purpose for which the contributions will be
18 used.

19 (2) An organization or professional fund-raiser shall not
20 knowingly take advantage of the inability of the person being
21 solicited to reasonably protect his or her interests by reason of
22 disability, illiteracy, or inability to understand the terms and
23 conditions of an agreement to contribute.

24 (3) An organization or professional fund-raiser shall make a
25 voice recording of all telephone communications that solicit con-
26 tributions and shall make the recording available to the attorney
27 general upon a request as a result of an investigation or

1 complaint. The recording shall be kept on file for 60 days by
2 the organization or professional fund-raiser.

3 (4) An organization or professional fund-raiser shall inform
4 the person called whether the solicitor is or is not a sworn
5 public safety officer or a member of the organization soliciting
6 the funds.

7 (5) An individual who makes a person-to-person solicitation
8 for contributions shall be a member of the organization on whose
9 behalf the contribution is sought and shall not wear a public
10 safety uniform or other clothing similar to a public safety
11 uniform.

12 (6) An individual, or a representative of the individual,
13 who makes a solicitation under subsection (5) shall not collect
14 or receive any person-to-person contribution as a result of the
15 solicitation.

16 Sec. 12. (1) Each organization or professional fund-raiser
17 shall prepare a disclosure statement to be given with all printed
18 material and read when contact is made by telephone, to each
19 person from whom a contribution is solicited. The disclosure
20 statement shall contain all of the following information:

21 (a) The name and purpose of the organization.

22 (b) Whether the solicitor is a separate organization acting
23 on behalf of a public safety organization.

24 (c) The specific purpose or purposes, including any politi-
25 cal purposes and campaign contributions, for which the contribu-
26 tions are to be used.

1 (2) Upon written or verbal request of the individual being
2 solicited, the solicitor shall provide the percentage ranges for
3 each category as described in section 3.

4 Sec. 13. Each organization or professional fund-raiser
5 shall print the following information conspicuously on all
6 invoices:

7 (a) The name and purpose of the organization.

8 (b) Whether the solicitor is a separate organization acting
9 on behalf of a public safety organization.

10 (c) The specific purpose or purposes for which the contribu-
11 tions are to be used.

12 (d) That the solicitor is registered with the attorney gen-
13 eral and that information concerning the solicitor may be
14 obtained by calling the toll-free telephone number established
15 pursuant to section 15. The solicitor shall provide the
16 toll-free telephone number.

17 Sec. 14. An organization is exempt from this act if its
18 solicitations meet all of the following conditions:

19 (a) The purpose of the solicitation is to aid spouses and
20 children of public safety officers who died or were injured in
21 the line of duty and not less than 75% of the contributions go
22 for this purpose.

23 (b) The organization's membership has officers from the same
24 employer as the slain or injured officer whose family would bene-
25 fit from the contributions and the solicitations are only con-
26 ducted within the jurisdiction of the public safety employer.

1 (c) The organization has received written approval, on a
2 form approved by the attorney general, from the person or persons
3 on whose behalf the contributions are being sought.

4 Sec. 15. The attorney general shall establish a toll-free
5 telephone number which may be called to obtain information con-
6 cerning or to file a complaint against a solicitor of contribu-
7 tions under this act.

8 Sec. 16. (1) If the attorney general has probable cause to
9 believe that a person has engaged, is engaging, or is about to
10 engage in a method, act, or practice which is unlawful pursuant
11 to this act, and upon notice given in accordance with this sec-
12 tion, the attorney general may bring an action in accordance with
13 principles of equity to restrain the defendant by temporary or
14 permanent injunction from engaging in the method, act, or
15 practice. The action may be brought in the circuit court of the
16 county where the defendant is established or solicits contribu-
17 tions or, if the defendant is not established in this state, in
18 the circuit court of Ingham county. The court may award costs to
19 the prevailing party. For persistent and knowing violation of
20 this act the court may assess the defendant a civil penalty of
21 not more than \$5,000.00.

22 (2) Unless waived by the court on good cause shown not less
23 than 10 days before the commencement of an action under this sec-
24 tion the attorney general shall notify the person of his or her
25 intended action and give the person an opportunity to cease and
26 desist from the alleged unlawful method, act, or practice or to
27 confer with the attorney general in person, by counsel, or by

1 other representative as to the proposed action before the
2 proposed filing date. The notice may be given the person by
3 mail, postage prepaid, to his or her usual place of business or,
4 if the person does not have a usual place of business, to his or
5 her last known address, or, with respect to a corporation, only
6 to a resident agent who is designated to receive service of pro-
7 cess or to an officer of the corporation.

8 (3) A prosecuting attorney or law enforcement officer
9 receiving notice of an alleged violation of this act, or of a
10 violation of an injunction, order, decree, or judgment issued in
11 an action brought pursuant to this section, or of an assurance
12 under section 17, shall immediately forward written notice of the
13 violation together with any information he or she may have to the
14 office of the attorney general.

15 (4) A person who knowingly violates the terms of an injunc-
16 tion, order, decree, or judgment issued pursuant to this section
17 shall forfeit and pay to the state a civil penalty of not more
18 than \$500.00 for each violation. For the purposes of this sec-
19 tion, the court issuing an injunction, order, decree, or judgment
20 shall retain jurisdiction, the cause shall be continued, and the
21 attorney general may petition for recovery of a civil penalty as
22 provided by this section.

23 Sec. 17. (1) If the attorney general has authority to
24 institute an action or proceeding pursuant to section 16, he or
25 she may accept an assurance of discontinuance of a method, act,
26 or practice which is alleged to be unlawful under this act from
27 the person who is alleged to have engaged, be engaging, or be

1 about to engage in the method, act, or practice. The assurance
2 shall not constitute an admission of guilt nor be introduced in
3 any other proceeding. The assurance may include a stipulation
4 for any or all of the following:

5 (a) The voluntary payment by the person for the costs of
6 investigation.

7 (b) An amount to be held in escrow pending the outcome of an
8 action.

9 (c) An amount for restitution to an aggrieved person.

10 (2) An assurance of discontinuance shall be in writing and
11 may be filed with the circuit court of Ingham county. The clerk
12 of the court shall maintain a record of the filings. Unless
13 rescinded by the parties or voided by a court for good cause, the
14 assurance may be enforced in the circuit court by the parties to
15 the assurance. The assurance may be modified by the parties or
16 by a court for good cause.

17 Sec. 18. (1) Upon the ex parte application of the attorney
18 general to the circuit court in the county where the defendant is
19 established or solicits contributions or, if the defendant is not
20 established in this state, in Ingham county, the circuit court,
21 if it finds probable cause to believe a person has engaged, is
22 engaging, or is about to engage in a method, act, or practice
23 which is unlawful under this act, may, after an ex parte hearing,
24 issue a subpoena compelling a person to appear before the attor-
25 ney general and answer under oath questions relating to an
26 alleged violation of this act. A person served with a subpoena
27 may be accompanied by counsel when he or she appears before the

1 attorney general. The subpoena may compel a person to produce
2 the books, records, papers, documents, or things relating to an
3 alleged violation of this act. During the examination of docu-
4 mentary material under the subpoena, the court may require a
5 person having knowledge of the documentary material or the mat-
6 ters contained in the documentary material to attend and give
7 testimony under oath or acknowledgment with respect to the docu-
8 mentary material.

9 (2) The subpoena shall include the notice of the time,
10 place, and cause of the taking of testimony, examination, or
11 attendance and shall allow not less than 10 days before the date
12 of the taking of testimony, examination, or attendance, unless
13 for good cause shown the court shortens that period of time.

14 (3) Service of the notice shall be in the manner provided
15 and subject to the provisions that apply to service of process
16 upon a defendant in a civil action commenced in the circuit
17 court.

18 (4) The notice shall include all of the following:

19 (a) A statement of the time and place for the taking of tes-
20 timony or the examination and the name and address of the person
21 to be examined. If the name is not known, the notice shall give
22 a general description sufficient to identify the person or the
23 particular class or group to which the person belongs.

24 (b) A reference to this section and the general subject
25 matter under investigation.

1 (c) A description of the documentary material to be produced
2 with reasonable specificity so as to indicate fairly the material
3 demanded.

4 (d) A return date within which the documentary material
5 shall be produced.

6 (e) Identification of the members of the attorney general's
7 staff to whom the documentary material shall be made available
8 for inspection and copying.

9 (5) At any time before the date specified in the notice,
10 upon motion for good cause shown, the court may extend the
11 reporting date or modify or set aside the notice and subpoena.

12 (6) The documentary material or other information obtained
13 by the attorney general pursuant to an investigation under this
14 section shall be confidential records of the office of the attor-
15 ney general and shall not be available for public inspection or
16 copying or divulged to any person except as provided in this
17 section. The attorney general may disclose documentary material
18 or other information as follows:

19 (a) To other law enforcement officials.

20 (b) In connection with an enforcement action brought pursu-
21 ant to this act.

22 (c) Upon order of the court, to a party in a private action
23 brought pursuant to this act.

24 Sec. 19. (1) A person upon whom a notice is served pursuant
25 to section 18 shall comply with the terms of the notice unless
26 otherwise provided by the order of the circuit court.

1 (2) A person who does any of the following shall be assessed
2 a civil penalty of not more than \$5,000.00.

3 (a) Knowingly without good cause fails to appear when served
4 with a notice.

5 (b) Knowingly avoids, evades, or prevents compliance, in
6 whole or in part, with an investigation, including the removal
7 from any place, concealment, destruction, mutilation, alteration,
8 or falsification of documentary material in the possession, cus-
9 tody, or control of a person subject to the notice.

10 (c) Knowingly conceals relevant information.

11 (3) The attorney general may file a petition in the circuit
12 court of the county in which the person is established or solici-
13 ts contributions or, if the person is not established in this
14 state, in the circuit court of Ingham county for an order to
15 enforce compliance with a subpoena or this section. A violation
16 of a final order entered pursuant to this section shall be pun-
17 ished as civil contempt.

18 (4) Upon the petition of the attorney general, the circuit
19 court may enjoin a person from soliciting contributions in this
20 state if the person persistently and knowingly evades or prevents
21 compliance with an injunction issued pursuant to this act.

22 Sec. 20. (1) The attorney general may bring a class action
23 on behalf of persons residing in or injured in this state for the
24 actual damages caused by any method, act, or practice that is
25 unlawful under this act.

26 (2) The court after a hearing may appoint a receiver or
27 order sequestration of the defendant's assets if it appears to

1 the satisfaction of the court that the defendant threatens or is
2 about to remove, conceal, or dispose of his or her assets to the
3 detriment of members of the class.

4 (3) If at any stage of the proceedings the court requires
5 that notice be sent to the class, the attorney general may peti-
6 tion the court to require the defendant to bear the cost of the
7 notice. In determining whether to impose the cost on the
8 defendant or the state, the court shall consider the probability
9 that the attorney general will succeed on the merits of the
10 action.

11 (4) If the defendant shows by a preponderance of the evi-
12 dence that a violation of this act resulted from a bona fide
13 error notwithstanding the maintenance of procedures reasonably
14 adapted to avoid the error, the amount of recovery shall be
15 limited to actual damages.

16 (5) An action shall not be brought by the attorney general
17 under this section more than 6 years after the occurrence of the
18 method, act, or practice which is the subject of the action.

19 Sec. 21. (1) Whether or not he or she seeks damages or has
20 an adequate remedy at law, a person may bring an action to do
21 either or both of the following:

22 (a) Obtain a declaratory judgment that a method, act, or
23 practice is unlawful under this act.

24 (b) Enjoin in accordance with the principles of equity a
25 person who is engaging or is about to engage in a method, act, or
26 practice which is unlawful under this act.

1 (2) Except in a class action, a person who suffers loss as a
2 result of a violation of this act may bring an action to recover
3 actual damages or \$250.00, whichever is greater, together with
4 reasonable attorneys' fees.

5 (3) A person who suffers loss as a result of a violation of
6 this act may bring a class action on behalf of persons residing
7 or injured in this state for the actual damages caused by any
8 method, act, or practice that is unlawful under this act.

9 (4) The court after a hearing may appoint a receiver or
10 order sequestration of the defendant's assets if it appears to
11 the satisfaction of the court that the defendant threatens or is
12 about to remove, conceal, or dispose of his or her assets to the
13 detriment of members of the class.

14 (5) If at any stage of proceedings brought under subsection
15 (3) the court requires that notice be sent to the class, a person
16 may petition the court to require the defendant to bear the cost
17 of notice. In determining whether to impose the cost on the
18 defendant or the plaintiff, the court shall consider the proba-
19 bility that the person will succeed on the merits of his or her
20 action.

21 (6) If the defendant shows by a preponderance of the evi-
22 dence that a violation of this act resulted from a bona fide
23 error notwithstanding the maintenance of procedures reasonably
24 adapted to avoid the error, the amount of recovery shall be
25 limited to actual damages.

26 (7) An action under this section shall not be brought more
27 than 6 years after the occurrence of the method, act, or practice

1 which is the subject of the action. When a person commences an
2 action against another person, the defendant may assert, as a
3 defense or counterclaim, any claim under this act arising out of
4 the transaction on which the action is brought.

5 Sec. 22. (1) Upon commencement of an action brought pursu-
6 ant to section 21 or section 25, the clerk of the court shall
7 mail a copy of the complaint to the attorney general, and upon
8 entry of a judgment or decree in the action, the clerk of the
9 court shall mail a copy of the judgment, decree, or order to the
10 attorney general.

11 (2) In a subsequent action by the attorney general brought
12 pursuant to section 20 proof of a violation of a permanent
13 injunction issued pursuant to section 16 is conclusive evidence
14 that the defendant engaged in a method, act, or practice which is
15 unlawful under this act.

16 Sec. 23. If the attorney general or prosecuting attorney
17 commences an action or files a voluntary assurance pursuant to
18 this act, filing fees shall not be required to be paid.

19 Sec. 24. A law enforcement officer in the state, if
20 requested by the attorney general or a prosecuting attorney,
21 shall aid and assist in an investigation of an alleged or actual
22 violation of this act.

23 Sec. 25. A prosecuting attorney may conduct an investiga-
24 tion pursuant to this act and may institute and prosecute an
25 action under this act in the same manner as the attorney
26 general.

1 Sec. 26. This act does not limit or restrict the exercise
2 of powers or the performance of the duties of the attorney
3 general or local prosecutors which they otherwise are authorized
4 to exercise or perform under any other provisions of law, includ-
5 ing seeking injunctive relief to stop prohibited activity.