

# HOUSE BILL No. 4406

February 28, 1991, Introduced by Reps. Hertel, Niederstadt, Wozniak, Olshove, Griffin, Kosteva, DeBeaussaert and Jaye and referred to the Committee on Consumers.

A bill to regulate the solicitation and collection of contributions by persons for charitable or public safety purposes; to provide for registration of these persons; to prescribe the powers and duties of certain state agencies and local officials; to prohibit certain activities; and to prescribe penalties.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3       Sec. 2. As used in this act:

4       (a) "Charitable organization" means a benevolent, education-  
5 al, philanthropic, humanistic, scientific, public health, envi-  
6 ronmental conservation, patriotic, or other eleemosynary organi-  
7 zation that solicits or obtains contributions from the public for  
8 1 or more charitable purposes. A chapter, branch, area office,  
9 or similar affiliate or person soliciting contributions within

1 the state for a charitable organization that has its principal  
2 place of business outside the state is a charitable  
3 organization.

4 (b) "Charitable purpose" means any benevolent, educational,  
5 philanthropic, humanistic, scientific, public health, environmen-  
6 tal conservation, patriotic, or other eleemosynary purpose.

7 (c) "Charitable sales promotion" means any advertising or  
8 sales campaign conducted by a commercial coventurer that repre-  
9 sents that the purchase or use of goods or services offered by  
10 the commercial coventurer are to benefit a charitable or public  
11 safety organization or purpose.

12 (d) "Commercial coventurer" means a person who for profit is  
13 regularly and primarily engaged in trade or commerce other than  
14 in connection with soliciting for charitable or public safety  
15 organizations or purposes and who conducts a charitable sales  
16 promotion.

17 (e) "Contribution" means the promise, grant, or payment of  
18 money or property of any kind or value, including a promise to  
19 pay. Contribution does not include a payment by a member of an  
20 organization for membership fees, dues, fines, or assessments, or  
21 services rendered to an individual member, if membership in the  
22 organization confers a bona fide right, privilege, professional  
23 standing, honor, or other direct benefit other than the right to  
24 vote, elect officers, or hold offices. Contribution does not  
25 include money or property received from a governmental  
26 authority.

1 (f) "Member" or "membership" does not include a person who  
2 is granted membership solely upon the making of a contribution as  
3 a result of solicitation.

4 (g) "Person" means an individual, organization, group, asso-  
5 ciation, partnership, corporation, trust, or any combination of  
6 them.

7 (h) "Professional fund-raiser" means a person who for com-  
8 pensation or other consideration consults with, plans, conducts,  
9 manages, or carries on a drive or campaign of soliciting contri-  
10 butions for or on behalf of a charitable, public safety, or reli-  
11 gious organization or any other person. Professional fund-raiser  
12 includes a person who engages in the business of or holds himself  
13 or herself out as engaged in the business of soliciting  
14 contributions. A bona fide officer or employee of a charitable  
15 or public safety organization or a person who applies for a grant  
16 or award from the government or an organization that is exempt  
17 from federal income taxation is not a professional fund-raiser  
18 unless his or her compensation is computed on the basis of funds  
19 to be raised or actually raised.

20 (i) "Public safety organization" means any organization,  
21 association, union, or conference purporting to be of benefit to  
22 current or former law enforcement officers, fire fighters, cor-  
23 rectional officers, or other persons who protect the public  
24 safety.

25 (j) "Solicit" or "solicitation" means the request or appeal,  
26 directly or indirectly, for any contribution, including, but not  
27 limited to, any of the following:

1       (i) An oral or written request.

2       (ii) An announcement over the radio or television, to the  
3 press, or by telephone, telefax, or telegraph concerning an  
4 appeal or campaign to which the public is requested to make a  
5 contribution for any charitable or public safety purpose.

6       (iii) The distribution, circulation, posting, or publishing  
7 of any handbill, written advertisement, or other publication that  
8 directly or by implication seeks to obtain public support.

9       (iv) The sale or offer or attempt to sell any advertisement,  
10 advertising space, subscription, ticket, or any service or tangi-  
11 ble item in connection with which an appeal is made for a chari-  
12 table or public safety purpose.

13       (v) The name of a person established for a charitable pur-  
14 pose is used or referred to in an appeal as an inducement or  
15 reason for making a sale.

16       (vi) In connection with a sale, a statement is made that all  
17 or part of the proceeds from the sale will be donated to a chari-  
18 table or public safety purpose.

19       Sec. 3. This act does not apply to the following entities  
20 or organizations:

21       (a) An organized church, religious organization, institution  
22 or society organized for a religious purpose and a charity,  
23 agency, and organization operated, supervised, or controlled by a  
24 church or religious organization.

25       (b) A governmental unit or instrumentality.

26       (c) An educational institution certified by the state  
27 department of education.

1 (d) A veterans organization incorporated under federal law.

2 (e) A licensed hospital, hospital based foundation, or hos-  
3 pital auxiliary that solicits solely for 1 or more licensed  
4 hospitals.

5 (f) A charitable organization if more than 1/2 of its activ-  
6 ity is licensed by the department of social services to serve  
7 children and families.

8 (g) A person or organization that receives less than  
9 \$25,000.00 in contributions annually, unless its fund-raising  
10 functions are conducted by a professional fund-raiser or commer-  
11 cial coventurer.

12 (h) A political party, candidate, or committee.

13 (i) An organization primarily engaged in the instruction,  
14 participation, or promotion of amateur athletics in an area not  
15 greater than 7 contiguous counties in the state.

16 (j) A booster organization associated with artistic, educa-  
17 tional, musical, or athletic events at an educational  
18 institution.

19 (k) A person who requests a contribution for the relief or  
20 benefit of an individual, specified by name at the time of the  
21 solicitation, if the contributions are turned over to the named  
22 beneficiary after deducting reasonable expenses for costs of  
23 solicitation and if all fund-raising functions are carried on by  
24 persons who are unpaid, directly or indirectly, for their  
25 services.

26 (l) A noncommercial radio or television station.

1       Sec. 4. A charitable or public safety organization shall  
2 not solicit or collect contributions within this state, or  
3 receive funds solicited within this state from another person or  
4 organization, without first registering with the attorney  
5 general. The person or organization shall register in writing on  
6 a form prescribed by the attorney general. The registration form  
7 shall contain all of the following information:

8       (a) The name of the organization and the name under which it  
9 intends to solicit contributions.

10       (b) The principal address of the organization and the  
11 address of each branch office in this state.

12       (c) The names and addresses of the officers, directors,  
13 trustees, chief executive officer, and resident agent.

14       (d) The state and date the organization was legally estab-  
15 lished, the form of its organization, and its federal tax exempt  
16 status.

17       (e) The purpose for which it is organized and each purpose  
18 for which contributions to be solicited will be used.

19       (f) The fiscal year of the organization.

20       (g) A financial statement for the immediately preceding  
21 fiscal year on a form prescribed by the attorney general. The  
22 information provided shall include, but is not limited to, the  
23 financial compensation and profit paid to or received by a pro-  
24 fessional fund-raiser or commercial coventurer.

25       (h) Whether the organization is or has ever been enjoined  
26 from soliciting contributions.

1 (i) The methods by which solicitations will be made. Copies  
2 of all soliciting materials shall be supplied upon request of the  
3 attorney general.

4 (j) Copies of all contracts with professional fund-raisers  
5 relating to financial compensation or profit to be derived by the  
6 professional fund-raisers.

7 (k) All other information as required by rule.

8 Sec. 5. The registration of a charitable or public safety  
9 organization shall be effective immediately upon the attorney  
10 general's receipt of a registration statement containing the  
11 information required under this act and a registration fee in the  
12 amount of \$100.00.

13 Sec. 6. (1) A charitable or public safety organization  
14 shall notify the attorney general within 30 days of any change in  
15 the information required to be furnished under section 4.

16 (2) Any change shall be filed in writing and signed by the  
17 president or other authorized officer of the organization.

18 Sec. 7. (1) An organization shall file within 6 months  
19 after the close of the organization's fiscal year a financial  
20 statement on a form prescribed by the attorney general together  
21 with payment of a \$100.00 renewal fee.

22 (2) The attorney general may revoke an organization's regis-  
23 tration for failure to file the required financial statement or  
24 pay the renewal fee.

25 (3) An organization receiving contributions in excess of  
26 \$100,000.00 during its fiscal year shall submit an audited

1 financial statement to the attorney general containing  
2 information and detail as required by the attorney general.

3       Sec. 8. (1) If a local, county, or area division of a char-  
4 itable organization is directly supervised and controlled by  
5 another organization that is incorporated and doing business  
6 within this state, the local, county, or area division is not  
7 required to register under this act if the parent organization  
8 files a registration statement on behalf of the local, county, or  
9 area division in addition to or as part of its registration  
10 statement.

11       (2) When a registration statement has been filed by a parent  
12 organization, the parent organization shall file the annual  
13 report required under section 7 on behalf of the local, county,  
14 or area division.

15       Sec. 9. (1) A professional fund-raiser shall not solicit  
16 contributions within this state on behalf of a charitable or  
17 public safety organization without first registering with the  
18 attorney general. The registration shall be in writing on a form  
19 prescribed by the attorney general and contain the same informa-  
20 tion as required by section 4.

21       (2) The registration form shall be accompanied by a regis-  
22 tration fee of \$250.00.

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



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

4       (5) A registration filed under this section may be renewed  
5 for additional 1-year periods upon filing both a renewal regis-  
6 tration in the form prescribed by the attorney general and pay-  
7 ment of a renewal fee of \$250.00, not less than 30 days before  
8 the expiration of the existing registration. The information  
9 required in the renewal form shall not exceed the information  
10 required in the initial registration form.

11       Sec. 10. A person subject to this act shall maintain accu-  
12 rate and detailed books and records which shall be open to  
13 inspection at all reasonable times by the attorney general.

14       Sec. 11. The attorney general shall promulgate rules neces-  
15 sary for the implementation and administration of this act in  
16 accordance with the administrative procedures act of 1969, Act  
17 No. 306 of the Public Acts of 1969, being sections 24.201 to  
18 24.328 of the Michigan Compiled Laws.

19       Sec. 12. The attorney general shall not accept a registra-  
20 tion under this act from an organization or professional  
21 fund-raiser located in another state or country without the orga-  
22 nization or professional fund-raiser first designating a resident  
23 agent in this state for the acceptance of service of process.

24       Sec. 13. (1) A charitable or public safety organization or  
25 professional fund-raiser that does not maintain an office within  
26 this state is subject to service of process by service upon its  
27 resident agent or, if there is no resident agent, by service upon

1 the person who has custody of the financial records as designated  
2 on the organization's registration form.

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

5 Sec. 14. (1) A person soliciting contributions shall not  
6 use for the purpose of soliciting contributions a name, symbol,  
7 or statement so closely related or similar to that used by  
8 another charitable or public safety organization or governmental  
9 agency that would tend to confuse or mislead the public.

10 (2) A person shall not use for the purpose of soliciting  
11 contributions the name of another person, except that of an offi-  
12 cer, director, or trustee of the charitable or public safety  
13 organization by or for which contributions are solicited, without  
14 the consent of the other person.

15 (3) A person who solicits contributions shall not use the  
16 name "police", "law enforcement", "firemen", or "fire fighter"  
17 unless a bona fide law enforcement or fire department authorized  
18 its use in writing.

19 (4) This section does not prevent the publication of names  
20 of contributors without their written consent in an annual or  
21 other periodic report issued by a charitable or public safety  
22 organization for the purpose of reporting in an annual or other  
23 periodic report issued by the organization.

24 (5) An organization whose name is being used in violation of  
25 this section may bring an action in the circuit court for the  
26 county in which the violation occurs for \$5,000.00 or actual

1 damages, whichever is greater, plus reasonable attorney fees and  
2 court costs.

3       Sec. 15. A charitable or public safety organization or pro-  
4 fessional fund-raiser shall not divert solicited funds to a pur-  
5 pose or purposes other than that for which the funds were con-  
6 tributed or solicited.

7       Sec. 16. (1) A charitable or public safety organization or  
8 professional fund-raiser shall not, in connection with the solic-  
9 itation or reception of contributions for or on behalf of a char-  
10 itable or public safety organization or public safety person,  
11 misrepresent, mislead, make false statements, or use a name other  
12 than the solicitor's legal name to another person by any manner  
13 that would lead a reasonable person to believe any of the  
14 following:

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

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

21       (c) That the person is under an obligation to make a  
22 contribution.

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

25       (e) That the solicitor is located in a geographic area that  
26 is different than the geographic area in which the solicitor is  
27 actually located.

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

4 (g) That the person has previously approved or agreed to  
5 make a contribution if the person has not given such approval or  
6 agreement.

7 (h) That the contributions are for a purpose that is differ-  
8 ent than the actual purpose for which the contributions will be  
9 used.

10 (2) A charitable or public safety organization or profes-  
11 sional fund-raiser shall not knowingly take advantage of the  
12 inability of the person being solicited to reasonably protect his  
13 or her interests by reason of disability, illiteracy, or inabil-  
14 ity to understand the terms and conditions of an agreement to  
15 contribute.

16 Sec. 17. (1) A charitable or public safety organization  
17 that agrees to permit a charitable sales promotion to be con-  
18 ducted on its behalf shall obtain a written agreement from the  
19 commercial coventurer and file a copy of the agreement with the  
20 attorney general not less than 10 days before commencement of the  
21 charitable sales promotion within the state. An authorized rep-  
22 resentative of the charitable or public safety organization and  
23 the commercial coventurer shall sign the agreement and the terms  
24 of the agreement shall include, but not be limited to, all of the  
25 following:

26 (a) The goods or services to be offered to the public  
27 through the sales promotion.

1 (b) The starting and final date of the sales promotion.

2 (c) The manner in which the name of the charitable or public  
3 safety organization is to be used, including any representation  
4 to be made to the public as to the amount or percent per unit of  
5 goods or services purchased or used that is to benefit the chari-  
6 table or public safety organization.

7 (d) A provision for a final accounting on a per unit basis  
8 to be given by the commercial coventurer to the charitable or  
9 public safety organization and the date when it is to be made.

10 (e) The date when and the manner in which the benefit is to  
11 be conferred on the charitable or public safety organization.

12 (2) A commercial coventurer shall keep a final accounting  
13 for each charitable sales promotion that it conducts for a period  
14 of 3 years following the completion of the charitable sales  
15 promotion.

16 (3) A commercial coventurer shall provide to the attorney  
17 general a copy of the final accounting for each charitable sales  
18 promotion that it conducts not later than 10 days after the  
19 attorney general requests it.

20 (4) A commercial coventurer shall disclose in each adver-  
21 tisement for a charitable sales promotion the amount per unit of  
22 goods or services purchased or used that is to benefit the chari-  
23 table or public safety organization. The amount may be expressed  
24 as a dollar amount or as a percentage of the value of the goods  
25 or services purchased or used.

26 Sec. 18. (1) Upon the ex parte application of the attorney  
27 general to the circuit court for the county in which the

1 defendant is established or solicits contributions or, if the  
2 defendant is not established in this state, in Ingham county, the  
3 circuit court, if it finds probable cause to believe a person has  
4 engaged, is engaging, or is about to engage in a method, act, or  
5 practice in violation of this act, may issue a subpoena compel-  
6 ling a person to appear before the attorney general and answer  
7 under oath questions relating to an alleged violation of this  
8 act. A person served with a subpoena may be accompanied by coun-  
9 sel when he or she appears before the attorney general. The sub-  
10 poena may compel a person to produce the books, records, papers,  
11 documents, or things relating to an alleged violation of this  
12 act. During the examination of documentary material under the  
13 subpoena, the court may require a person having knowledge of the  
14 documentary material or the matters contained in the documentary  
15 material to attend and give testimony under oath or acknowledg-  
16 ment with respect to the documentary material.

17       (2) The subpoena shall be served not less than 10 days  
18 before the date of the taking of testimony, examination, or  
19 attendance, unless otherwise ordered by the court.

20       (3) The notice shall include all of the following  
21 information:

22       (a) A statement of the time and place for the taking of tes-  
23 timony or examination and the name and address of the person to  
24 be examined.

25       (b) A reference to this section and the general subject  
26 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 (4) 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 (5) 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 are exempt from the freedom of information act,  
16 Act No. 442 of the Public Acts of 1976, being sections 15.231 to  
17 15.246 of the Michigan Compiled Laws. The attorney general may  
18 disclose documentary material 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.

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

26 (2) A person upon whom notice is served shall not do any of  
27 the following:

1 (a) Knowingly without good cause fails to appear when served.  
2 with a notice.

3 (b) Knowingly avoid, evade, or prevent compliance, in whole  
4 or in part, with an investigation, including the removal from any  
5 place, concealment, destruction, mutilation, alteration, or fal-  
6 sification of documentary material in the possession, custody, or  
7 control of a person subject to the notice.

8 (c) Knowingly conceal relevant information.

9 (3) The attorney general may file a petition in the circuit  
10 court for the county in which the person is established or solici-  
11 its contributions or, if the person is not established in this  
12 state, in the circuit court for Ingham county for an order to  
13 enforce compliance with a subpoena or this section.

14 Sec. 20. (1) If the attorney general has probable cause to  
15 believe that a person has engaged, is engaging, or is about to  
16 engage in a method, act, or practice that is unlawful pursuant to  
17 this act, and upon notice given in accordance with this section,  
18 the attorney general may bring an action in accordance with prin-  
19 ciples of equity to restrain the defendant by temporary or per-  
20 manent injunction from engaging in the method, act, or practice.  
21 The action may be brought in the circuit court for the county in  
22 which the defendant is established or solicits contributions or,  
23 if the defendant is not established in this state, in the circuit  
24 court for Ingham county. The court may award costs to the pre-  
25 vailing party.

26 (2) A prosecuting attorney or law enforcement officer  
27 receiving notice of an alleged violation of this act, or of a



1 violation of an injunction, order, decree, or judgment issued in  
2 an action brought pursuant to this section, shall immediately  
3 forward written notice of the violation together with any infor-  
4 mation he or she may have to the office of the attorney general.

5       Sec. 21. In addition to any other penalties provided by  
6 this act, if a person violates this act, the court may order any  
7 or all of the following:

8       (a) The denial, suspension, or revocation of the person's  
9 certificate of registration.

10       (b) The person to pay a civil fine of not less than \$500.00  
11 or more than \$10,000.00.

12       (c) The person to pay restitution to any other person who  
13 was injured as a result of the violation.

14       Sec. 22. A person who violates this act is guilty of a mis-  
15 demeanor, punishable by imprisonment for not more than 1 year, or  
16 a fine of not more than \$1,000.00, or both.

17       Sec. 23. This act does not limit or restrict the exercise  
18 of powers or the performance of the duties of the attorney gen-  
19 eral or local prosecutors which they otherwise are authorized to  
20 exercise or perform under any other provisions of law.