



HOUSE BILL No. 5340

October 26, 1995, Introduced by Rep. Hood and referred to the Committee on Commerce.

A bill to regulate certain solicitation of contributions; to provide for registration and disclosure statements; to prescribe the powers and duties of certain state agencies and officials; to prohibit certain activities; to prescribe remedies and penalties; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 Sec. 2. As used in this act:

4 (a) "Business day" means Monday through Friday and does not
5 include Saturday, Sunday, or the following business holidays:
6 New Year's day, Martin Luther King day, Presidents' day, Memorial
7 day, Independence day, Labor day, Columbus day, Veterans' day,
8 Thanksgiving day, and Christmas.

1 (b) "Contribution" means the promise, grant, or payment of
2 money or property of any kind or value, including promises to
3 pay. Contribution does not include money or property received
4 from a governmental entity or a foundation and restricted as to
5 use.

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

9 Sec. 3. A person shall not solicit contributions within
10 this state without first registering with the attorney general.
11 A person shall register in writing on a form prescribed by the
12 attorney general.

13 Sec. 4. The registration forms and documents required to be
14 filed with the attorney general under this act shall be open to
15 public inspection as provided by 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.

18 Sec. 5. A person shall not divert solicited funds to a pur-
19 pose or purposes other than that for which the funds were con-
20 tributed or solicited.

21 Sec. 6. (1) A person shall not, in connection with the
22 solicitation or reception of contributions for or on behalf of an
23 organization or person, misrepresent to, mislead, make false
24 statements to, or use a name other than the solicitor's legal
25 name to another person by any manner that would lead a reasonable
26 person to believe any of the following:

1 (a) That if the person makes a contribution, he or she will
2 receive special benefits or treatment or that failure to make a
3 contribution will result in unfavorable treatment.

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

6 (c) That the person is under an obligation to make a
7 contribution.

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

10 (e) 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 (f) That the person being solicited has previously approved
14 or agreed to make a contribution when the person has not given
15 approval or agreement.

16 (g) 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) A person shall not knowingly take advantage of the
20 inability of the person being solicited to reasonably protect his
21 or her interests by reason of age, disability, illiteracy, or
22 inability to understand the terms and conditions of an agreement
23 to contribute.

24 (3) A person shall not make a solicitation for contributions
25 either in person at or by telephone to the residence of another
26 person between the hours of 8 p.m. and 9 a.m.

1 (4) If a person makes a contribution in an amount greater
2 than \$1,000.00, then the person receiving the contribution shall
3 report the contribution to the attorney general on a form pre-
4 scribed by the attorney general.

5 Sec. 7. A person shall prepare a disclosure statement to be
6 given with all printed material and read when contact is made by
7 telephone to each person from whom a contribution is solicited.
8 The disclosure statement shall contain, but is not limited to,
9 all of the following information:

10 (a) The name of the person making the solicitation or the
11 name of the person on whose behalf the solicitation is made.

12 (b) The specific purpose or purposes, including any politi-
13 cal purposes and campaign contributions, for which the contribu-
14 tions are to be used.

15 (c) That the person being solicited is under no obligation
16 to make a contribution.

17 (d) The toll-free number established pursuant to section
18 14.

19 Sec. 8. In addition to any other rights a person may have
20 to revoke a promise to contribute or recover a contribution made,
21 a person may rescind the promise to contribute or demand the
22 return of a contribution made until midnight of the third busi-
23 ness day after the day on which the person made the promise or
24 contribution.

25 Sec. 9. (1) If the attorney general has probable cause to
26 believe that a person has engaged, is engaging, or is about to
27 engage in a method, act, or practice that is unlawful pursuant to

1 this act, and upon notice given in accordance with this section,
2 the attorney general may bring an action in accordance with prin-
3 ciples of equity to restrain the defendant by temporary or per-
4 manent injunction from engaging in the method, act, or practice.
5 The action may be brought in the circuit court for the county in
6 which the defendant is established or solicits contributions or,
7 if the defendant is not established in this state, in the circuit
8 court for Ingham county. The court may award costs to the pre-
9 vailing party.

10 (2) For persistent and knowing violation of this act the
11 court may assess the defendant a civil fine of not more than
12 \$5,000.00.

13 (3) Unless waived by the court on good cause shown not less
14 than 10 days before the commencement of an action under this sec-
15 tion, the attorney general shall notify the person of his or her
16 intended action and give the person an opportunity to cease and
17 desist from the alleged unlawful method, act, or practice or to
18 confer with the attorney general in person, by counsel, or by
19 other representative as to the proposed action before the pro-
20 posed filing date. The notice may be given to the person by
21 mail, postage prepaid, to his or her usual place of business or,
22 if the person does not have a usual place of business, to his or
23 her last known address, or, with respect to a corporation, only
24 to a resident agent who is designated to receive service of pro-
25 cess or to an officer of the corporation.

26 (4) A person who knowingly violates the terms of an
27 injunction, order, decree, or judgment issued pursuant to this

1 section shall forfeit and pay to the state a civil fine of not
2 more than \$5,000.00 for each violation. For the purposes of this
3 section, the court issuing an injunction, order, decree, or judg-
4 ment shall retain jurisdiction, the cause shall be continued, and
5 the attorney general may petition for recovery of a civil fine as
6 provided by this section.

7 Sec. 10. (1) The attorney general may bring a class action
8 on behalf of persons residing in or injured in this state for the
9 actual damages caused by any method, act, or practice that is
10 unlawful under this act.

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

16 (3) If at any stage of the proceedings the court requires
17 that notice be sent to the class, the attorney general may peti-
18 tion the court to require the defendant to bear the cost of the
19 notice. In determining whether to impose the cost on the
20 defendant or the state, the court shall consider the probability
21 that the attorney general will succeed on the merits of the
22 action.

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

1 (5) An action shall not be brought by the attorney general
2 under this section more than 6 years after the occurrence of the
3 method, act, or practice that is the subject of the action.

4 Sec. 11. (1) Whether or not a person seeks damages or has
5 an adequate remedy at law, he or she may bring an action to do
6 either or both of the following:

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

9 (b) Enjoin in accordance with the principles of equity a
10 person who is engaging or is about to engage in a method, act, or
11 practice that is unlawful under this act.

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

16 Sec. 12. (1) Upon commencement of an action brought pursu-
17 ant to section 11 or section 13, the clerk of the court shall
18 mail a copy of the complaint to the attorney general, and upon
19 entry of a judgment or decree in the action, the clerk of the
20 court shall mail a copy of the judgment, decree, or order to the
21 attorney general.

22 (2) In a subsequent action by the attorney general brought
23 pursuant to section 10, proof of a violation of a permanent
24 injunction issued pursuant to section 9 is conclusive evidence
25 that the defendant engaged in a method, act, or practice that is
26 unlawful under this act.

1 Sec. 13. A prosecuting attorney may conduct an
2 investigation pursuant to this act and may institute and
3 prosecute an action under this act in the same manner as the
4 attorney general.

5 Sec. 14. The attorney general shall establish a toll-free
6 telephone number which may be called to obtain information con-
7 cerning or to file a complaint against a solicitor of contribu-
8 tions under this act.

9 Sec. 15. This act does not limit or restrict the exercise
10 of powers or the performance of the duties of the attorney gen-
11 eral or local prosecutors that they otherwise are authorized to
12 exercise or perform under any other provisions of law, including
13 seeking injunctive relief to stop prohibited activity.

14 Sec. 16. This act does not apply to a person regulated pur-
15 suant to the public safety solicitation act, Act No. 298 of the
16 Public Acts of 1992, being sections 14.301 to 14.327 of the
17 Michigan Compiled Laws.

18 Sec. 17. Act No. 169 of the Public Acts of 1975, being sec-
19 tions 400.271 to 400.294 of the Michigan Compiled Laws, is
20 repealed.