

SENATE BILL 71

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2000 Regular Session
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(PRE-FILED)

By: **Chairman, Judicial Proceedings Committee (Departmental - Secretary of State)**

Requested: November 15, 1999
Introduced and read first time: January 12, 2000
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: February 9, 2000

CHAPTER _____

1 AN ACT concerning

2 **Maryland Solicitations Act**

3 FOR the purpose of providing the Secretary of State with certain investigatory and
4 enforcement powers over certain organizations; requiring the registration of
5 certain public safety solicitors who solicit or receive contributions for certain
6 public safety organizations; making certain provisions of law relating to
7 solicitations for contributions applicable to certain public safety solicitors;
8 requiring certain public safety solicitors to include certain information in
9 written solicitations and receipts for public safety contributions; prohibiting
10 certain acts by public safety solicitors; providing certain penalties; changing the
11 name of the Maryland Charitable Solicitations Act to the Maryland Solicitations
12 Act; defining certain terms; and generally relating to the requirements of the
13 Maryland Solicitations Act.

14 BY repealing and reenacting, with amendments,
15 Article - Business Regulation
16 Section 6-101(c), 6-102(b), 6-205, and 6-701
17 Annotated Code of Maryland
18 (1998 Replacement Volume and 1999 Supplement)

19 BY adding to
20 Article - Business Regulation
21 Section 6-101(j), (k), and (l); and 6-5A-01 through 6-5A-11, inclusive, to be
22 under the new subtitle "Subtitle 5A. Public Safety Solicitors"
23 Annotated Code of Maryland

1 (1998 Replacement Volume and 1999 Supplement)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
3 MARYLAND, That the Laws of Maryland read as follows:

4 **Article - Business Regulation**

5 6-101.

6 (c) (1) "Charitable contribution" means a contribution made on a
7 representation that it will be used for a charitable purpose.

8 (2) "Charitable contribution" includes the payment, transfer, or
9 enforceable pledge of financial help, including money, credit, property, or services.

10 (3) "Charitable contribution" does not include:

11 (i) an unsolicited gift;

12 (ii) a government grant or government money;

13 (iii) membership assessments, dues, or fines; [and]

14 (iv) a payment for property sold or services rendered by a charitable
15 organization, unless the property is sold or the services are rendered in connection
16 with a charitable solicitation; AND

17 (V) A PUBLIC SAFETY CONTRIBUTION AS DEFINED IN SUBSECTION
18 (J) OF THIS SECTION.

19 (J) "PUBLIC SAFETY CONTRIBUTION" MEANS A CONTRIBUTION MADE ON A
20 REPRESENTATION THAT IT WILL BE USED FOR THE PURPOSES OF A PUBLIC SAFETY
21 ORGANIZATION.

22 (K) "PUBLIC SAFETY ORGANIZATION" MEANS A PERSON WHO IS OR PURPORTS
23 TO BE A FIRE FIGHTING, AMBULANCE, RESCUE, POLICE, FRATERNAL, OR OTHER LAW
24 ENFORCEMENT ORGANIZATION.

25 (L) (1) "PUBLIC SAFETY SOLICITOR" MEANS A PERSON WHO, FOR PAY,
26 SOLICITS OR RECEIVES PUBLIC SAFETY CONTRIBUTIONS, PERSONALLY OR THROUGH
27 ANOTHER.

28 (2) "PUBLIC SAFETY SOLICITOR" DOES NOT INCLUDE:

29 (I) AN ATTORNEY, INVESTMENT COUNSELOR, OR BANKER
30 BECAUSE OF ADVISING A CLIENT OR CUSTOMER TO MAKE A PUBLIC SAFETY
31 CONTRIBUTION; OR

32 (II) AN INDIVIDUAL WHO IS A MEMBER, SALARIED OFFICER, OR
33 EMPLOYEE OF A PUBLIC SAFETY ORGANIZATION THAT IS AFFILIATED WITH A STATE
34 OR LOCAL AGENCY AND KEEPS A PERMANENT OFFICE IN THE STATE.

1 6-102.

2 (b) (1) [This] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
3 SUBSECTION, THIS title does not apply to fund-raising by a volunteer organization of
4 fire fighters or rescue or ambulance personnel for its ambulance, fire fighting, or
5 rescue operations.

6 (2) THIS TITLE APPLIES TO A PUBLIC SAFETY SOLICITOR EMPLOYED BY
7 A VOLUNTEER ORGANIZATION OF FIRE FIGHTERS OR RESCUE OR AMBULANCE
8 PERSONNEL.

9 6-205.

10 (a) (1) The Secretary of State or the Secretary's designee may investigate an
11 alleged violation of this title.

12 (2) (i) In the course of any examination, investigation, or hearing, the
13 Secretary of State may subpoena witnesses, administer oaths, examine an individual
14 under oath, and compel production of records, books, papers, and other documents.

15 (ii) In the course of any examination, investigation, or hearing, the
16 legal counsel for the Office of the Secretary of State may administer oaths and
17 examine an individual under oath.

18 (iii) Information obtained under this subsection is not admissible in
19 a subsequent criminal proceeding against the person who provided the information.

20 (b) If the Secretary of State finds or has reasonable grounds to believe that a
21 charitable organization [or], charitable representative, OR PUBLIC SAFETY
22 SOLICITOR has violated this title, the Secretary of State may take 1 or more of the
23 following actions:

24 (1) by mediation with the apparent violators and any representatives
25 they may choose to assist them, enter into a written assurance of discontinuance,
26 written assurance of voluntary compliance, or other settlement agreement with the
27 apparent violators, in accordance with subsection (c) of this section;

28 (2) summarily issue a cease and desist order to the violator, if the
29 Secretary of State:

30 (i) finds that this title has been violated and that the public health,
31 safety, or welfare requires emergency action; and

32 (ii) gives the violator written notice of the order, the reasons for the
33 order, and the right of the violator to request a hearing under subsection (g) of this
34 section; or

35 (3) refer the matter to:

36 (i) the Attorney General for civil enforcement; or

1 (ii) the appropriate State's Attorney for prosecution.

2 (c) A settlement agreement under subsection (b)(1) of this section may include
3 one or more of the following stipulations or conditions:

4 (1) payment by the apparent violator of the cost of the investigation;

5 (2) payment by the apparent violator of civil penalties a court could order
6 under this title;

7 (3) payment by the apparent violator of refunds to donors a court could
8 order under this title;

9 (4) payment by the apparent violator of contributions received to
10 charitable OR PUBLIC SAFETY beneficiaries or for charitable OR PUBLIC SAFETY
11 purposes consistent with the beneficiaries named or purposes represented in the
12 charitable OR PUBLIC SAFETY solicitations which generated the contributions; or

13 (5) any other stipulation, condition, or remedy that will correct a
14 violation of this title.

15 (d) An agreement under this section is for conciliation purposes only and does
16 not constitute an admission by any party that the law has been violated.

17 (e) (1) It is a violation of this title to fail to adhere to any provision
18 contained in a settlement agreement.

19 (2) A failure of the Secretary of State to enforce a violation of any
20 provision of a settlement agreement does not constitute a waiver of that or any other
21 provision, or of any right of the Secretary of State.

22 (f) On referral by the Secretary of State, the Attorney General may sue in the
23 Circuit Court for Anne Arundel County for an order that:

24 (1) restrains further violation of this title;

25 (2) restrains the defendant from making further charitable OR PUBLIC
26 SAFETY solicitations in the State;

27 (3) EXCEPT AS PROVIDED UNDER § 6-5A-11 OF THIS TITLE, recovers for
28 the State a civil penalty not to exceed \$5,000 for each willful violation of the Act;

29 (4) EXCEPT AS PROVIDED UNDER § 6-5A-11 OF THIS TITLE, recovers for
30 the State a civil penalty not to exceed \$3,000 for each grossly negligent violation of the
31 Act;

32 (5) enforces compliance with this title; or

33 (6) secures any other appropriate relief, including:

34 (i) refunds to donors; and

1 (ii) payment of the charitable OR PUBLIC SAFETY contributions
2 received by the solicitor to charitable OR PUBLIC SAFETY purposes or beneficiaries
3 consistent with the purposes represented or beneficiaries named in the charitable OR
4 PUBLIC SAFETY solicitations which generated the contributions.

5 (g) (1) If the Secretary of State issues a cease and desist order to a person,
6 the person may request a hearing from the Secretary of State.

7 (2) Within 30 days after a request is submitted, the Secretary of State
8 shall hold a hearing in accordance with Title 10, Subtitle 2 of the State Government
9 Article.

10 SUBTITLE 5A. PUBLIC SAFETY SOLICITORS.

11 6-5A-01.

12 A PERSON IS PROHIBITED FROM ACTING AS A PUBLIC SAFETY SOLICITOR
13 UNLESS THE PERSON HAS APPLIED TO REGISTER WITH THE SECRETARY OF STATE.

14 6-5A-02.

15 AN APPLICANT FOR REGISTRATION AS A PUBLIC SAFETY SOLICITOR SHALL:

16 (1) SUBMIT TO THE SECRETARY OF STATE AN APPLICATION UNDER
17 OATH ON THE FORM THE SECRETARY OF STATE PROVIDES FOR EACH PUBLIC SAFETY
18 ORGANIZATION ON WHOSE BEHALF THE APPLICANT IS SOLICITING IN THE STATE;

19 (2) CONSENT IN WRITING TO THE JURISDICTION AND VENUE OF THE
20 CIRCUIT COURT FOR ANNE ARUNDEL COUNTY IN ACTIONS BROUGHT UNDER THIS
21 TITLE;

22 (3) PAY TO THE SECRETARY OF STATE AN APPLICATION FEE OF \$100 FOR
23 REGISTRATION AS A PUBLIC SAFETY SOLICITOR;

24 (4) (I) CERTIFY THAT ALL TAXES DUE FROM THE APPLICANT TO THE
25 STATE OR TO BALTIMORE CITY OR A COUNTY OF THE STATE DURING THE PRECEDING
26 FISCAL YEAR HAVE BEEN PAID, AND ALL TAXES THE APPLICANT WAS REQUIRED TO
27 COLLECT AND PAY OVER TO THE STATE OR TO BALTIMORE CITY OR A COUNTY OF
28 THE STATE DURING THE PRECEDING FISCAL YEAR HAVE BEEN COLLECTED AND
29 PAID OVER; OR

30 (II) CERTIFY THAT THE TAXES DUE FROM THE APPLICANT TO THE
31 STATE OR TO BALTIMORE CITY OR A COUNTY ARE UNDER DISPUTE AND THE DISPUTE
32 HAS NOT BEEN FINALLY RESOLVED; AND

33 (5) PROVIDE ANY OTHER NONPROPRIETARY INFORMATION THAT THE
34 SECRETARY OF STATE REQUIRES.

1 6-5A-03.

2 (A) (1) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (F) OF THIS SECTION,
3 ON APPLYING FOR REGISTRATION AS A PUBLIC SAFETY SOLICITOR, AN APPLICANT
4 SHALL EXECUTE AND SUBMIT TO THE SECRETARY OF STATE A BOND IN THE SUM OF
5 \$25,000, WITH SURETY THAT THE SECRETARY OF STATE APPROVES.

6 (2) THE BOND SHALL RUN TO THE STATE FOR THE USE OF THE STATE
7 AND EACH PERSON WHO MAY HAVE A CAUSE OF ACTION AGAINST THE APPLICANT
8 FOR LOSS RESULTING FROM MALFEASANCE, NONFEASANCE, OR MISFEASANCE IN
9 THE APPLICANT'S PUBLIC SAFETY SOLICITATION.

10 (B) AN APPLICANT FOR REGISTRATION AS A PUBLIC SAFETY SOLICITOR
11 SHALL SUBMIT A CONSOLIDATED BOND FOR ALL OF THE OFFICERS, AGENTS,
12 MEMBERS, SUBCONTRACTORS, AND EMPLOYEES OF THE PUBLIC SAFETY SOLICITOR.

13 (C) AN APPLICANT FOR REGISTRATION AS A PUBLIC SAFETY SOLICITOR THAT
14 SUBMITS A \$25,000 IRREVOCABLE LETTER OF CREDIT TO THE SECRETARY OF STATE
15 IS NOT REQUIRED TO SUBMIT A SURETY BOND UNDER SUBSECTION (A) OF THIS
16 SECTION.

17 (D) THE SECRETARY OF STATE MAY RETURN A BOND OR IRREVOCABLE
18 LETTER OF CREDIT FILED UNDER THIS SECTION ONLY IF:

19 (1) 3 YEARS HAVE PASSED SINCE THE REGISTRATION PERIOD TO WHICH
20 THE BOND OR LETTER APPLIES, AND THERE IS NO PENDING CLAIM AGAINST THE
21 BOND OR LETTER; OR

22 (2) THE REGISTRATION PERIOD TO WHICH THE BOND OR LETTER
23 APPLIES EXPIRES AND IT APPEARS TO THE SATISFACTION OF THE SECRETARY OF
24 STATE THAT THE PERSON IS NOT IN VIOLATION OF THIS SUBTITLE.

25 (E) THE SECRETARY OF STATE SHALL INCLUDE WITH AN APPLICATION FOR
26 REGISTRATION AS A PUBLIC SAFETY SOLICITOR A NOTICE THAT A PERSON MAY
27 APPLY FOR RETURN OF A BOND OR IRREVOCABLE LETTER OF CREDIT AFTER THE
28 REGISTRATION PERIOD TO WHICH THE BOND OR LETTER APPLIES.

29 (F) A PUBLIC SAFETY SOLICITOR WITH A CURRENT REGISTRATION SHALL NOT
30 BE REQUIRED TO EXECUTE AND SUBMIT TO THE SECRETARY OF STATE AN
31 ADDITIONAL BOND OR IRREVOCABLE LETTER OF CREDIT FOR EACH PUBLIC SAFETY
32 ORGANIZATION ON WHOSE BEHALF PUBLIC SAFETY CONTRIBUTIONS WILL BE
33 SOLICITED, PROVIDED THAT A SEPARATE APPLICATION IS SUBMITTED FOR EACH
34 ORGANIZATION.

35 6-5A-04.

36 (A) IF THE SECRETARY OF STATE FINDS THAT AN APPLICANT FOR
37 REGISTRATION HAS COMPLIED WITH THIS TITLE AND THE REGULATIONS ADOPTED
38 UNDER IT, THE SECRETARY OF STATE SHALL APPROVE THE APPLICATION.

1 (B) IF THE SECRETARY OF STATE FINDS THAT AN APPLICANT FOR
2 REGISTRATION HAS NOT COMPLIED WITH THIS TITLE AND THE REGULATIONS
3 ADOPTED UNDER IT APPLICABLE TO REGISTRATION, THE SECRETARY OF STATE
4 SHALL NOTIFY THE APPLICANT OF THE REASONS THE APPLICANT IS NOT IN
5 COMPLIANCE.

6 6-5A-05.

7 EACH REGISTRATION EXPIRES ON THE FIRST ANNIVERSARY OF ITS APPROVAL
8 DATE.

9 6-5A-06.

10 A PUBLIC SAFETY SOLICITOR SHALL INCLUDE IN ALL WRITTEN SOLICITATIONS
11 AND RECEIPTS FOR PUBLIC SAFETY CONTRIBUTIONS:

12 (1) A TOLL FREE TELEPHONE NUMBER OF THE PUBLIC SAFETY
13 SOLICITOR WITHIN THE LOCAL AREA CODE IN WHICH THE PUBLIC SAFETY
14 CONTRIBUTION IS SOLICITED FOR INDIVIDUALS OR BUSINESSES SOLICITED TO
15 OBTAIN VERIFICATION OF AUTHENTICITY OR MAKE COMPLAINTS;

16 (2) A STATEMENT THAT, FOR THE COST OF COPYING AND POSTAGE,
17 INFORMATION SUBMITTED UNDER THIS TITLE IS AVAILABLE FROM THE SECRETARY
18 OF STATE; AND

19 (3) THE ADDRESS AND THE TELEPHONE NUMBER OF THE SECRETARY
20 OF STATE.

21 6-5A-07.

22 A PUBLIC SAFETY SOLICITOR MAY NOT SOLICIT PUBLIC SAFETY
23 CONTRIBUTIONS UNLESS:

24 (1) THE SCRIPT OF AN ORAL SOLICITATION AND A COPY OF A WRITTEN
25 SOLICITATION SHALL:

26 (I) BE APPROVED BY THE PUBLIC SAFETY ORGANIZATION ON
27 WHOSE BEHALF THE PUBLIC SAFETY CONTRIBUTION IS SOLICITED; AND

28 (II) INCLUDE:

29 1. THE SPECIFIC PURPOSE THAT IS TO BE ADVANCED WITH
30 PUBLIC SAFETY CONTRIBUTIONS; AND

31 2. A STATEMENT THAT THE PERSON ~~WHO SOLICITS PUBLIC~~
32 ~~SAFETY CONTRIBUTIONS IS A PAID FUND-RAISER~~ IS SOLICITING ON BEHALF OF A
33 PUBLIC SAFETY ORGANIZATION.

34 (2) A COPY OF THE APPROVED SCRIPT OF AN ORAL SOLICITATION AND A
35 COPY OF A WRITTEN SOLICITATION SHALL BE MADE AVAILABLE TO THE SECRETARY
36 OF STATE UPON REQUEST.

1 6-5A-08.

2 A PUBLIC SAFETY SOLICITOR MAY NOT:

3 (1) FALSELY STATE, IMPLY, OR MISLEAD, DIRECTLY OR INDIRECTLY, THE
4 PERSON SOLICITED FOR A PUBLIC SAFETY CONTRIBUTION THAT THE PUBLIC SAFETY
5 SOLICITOR IS A FIRE FIGHTING, AMBULANCE, RESCUE, POLICE, FRATERNAL, OR
6 OTHER LAW ENFORCEMENT EMPLOYEE OR MEMBER;

7 (2) SEND AN INDIVIDUAL TO PERSONALLY PICK UP A PUBLIC SAFETY
8 CONTRIBUTION FROM A PRIVATE RESIDENCE, BUSINESS, OR ANY OTHER LOCATION,
9 UNLESS THE INDIVIDUAL PRESENTS AT THE TIME OF THE SOLICITATION,
10 COLLECTION, OR ATTEMPT TO COLLECT:

11 (I) PHOTO IDENTIFICATION; AND

12 (II) CORRESPONDENCE FROM THE PUBLIC SAFETY ORGANIZATION
13 AUTHORIZING THE PUBLIC SAFETY SOLICITOR TO SOLICIT ON BEHALF OF THE
14 PUBLIC SAFETY ORGANIZATION FOR A STATED PERIOD OF TIME;

15 (3) SOLICIT IN THE STATE USING AN ALIAS, FICTITIOUS, OR FALSE
16 NAME OTHER THAN THE FULL NAME OF THE PUBLIC SAFETY ORGANIZATION ON
17 WHOSE BEHALF THE PUBLIC SAFETY CONTRIBUTION IS SOLICITED AS STATED IN
18 THE APPLICATION FOR REGISTRATION AS A PUBLIC SAFETY SOLICITOR; OR

19 (4) PROMISE, DIRECTLY OR INDIRECTLY, OR IMPLY THAT THE
20 INDIVIDUAL OR BUSINESS BEING SOLICITED WILL RECEIVE ANY ADDITIONAL OR
21 DIFFERENT LAW ENFORCEMENT SERVICES OR TREATMENT BY A FIRE FIGHTING,
22 AMBULANCE, RESCUE, POLICE, FRATERNAL, OR OTHER LAW ENFORCEMENT
23 ORGANIZATION OR EMPLOYEE AS A RESULT OF A PLEDGE OR REFUSAL TO MAKE A
24 PUBLIC SAFETY CONTRIBUTION.

25 6-5A-09.

26 (A) AN APPLICANT FOR REGISTRATION AS A PUBLIC SAFETY SOLICITOR OR A
27 REGISTERED PUBLIC SAFETY SOLICITOR MAY NOT WILLFULLY OR IN A GROSSLY
28 NEGLIGENT WAY:

29 (1) SUBMIT TO THE SECRETARY OF STATE A REGISTRATION STATEMENT
30 OR OTHER INFORMATION THAT IS MATERIALLY FALSE; OR

31 (2) COMMIT A VIOLATION OF THIS SUBTITLE.

32 (B) A PRINCIPAL OWNER OR EMPLOYEE OF THE PUBLIC SAFETY SOLICITOR
33 MAY NOT WILLFULLY OR IN A GROSSLY NEGLIGENT WAY COMMIT OR CAUSE TO
34 COMMIT A VIOLATION OF THIS SUBTITLE.

1 6-5A-10.

2 (A) A PERSON THAT ENGAGES IN SOLICITING PUBLIC SAFETY
3 CONTRIBUTIONS WITHOUT PRIOR APPLICATION FOR REGISTRATION AS A PUBLIC
4 SAFETY SOLICITOR IS GUILTY OF A MISDEMEANOR AND, ON CONVICTION, IS
5 SUBJECT TO A FINE NOT EXCEEDING 10 TIMES THE VALUE OF THE TOTAL AMOUNT
6 OF FUNDS IMPROPERLY SOLICITED OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR
7 BOTH.

8 (B) A PERSON CONVICTED OF A VIOLATION OF THIS SECTION ~~SHALL~~ MAY:

9 (1) BE PROHIBITED FROM ACTING AS A PUBLIC SAFETY SOLICITOR FOR
10 A PERIOD UP TO 10 YEARS BEGINNING ON THE DATE OF THE CONVICTION; AND

11 (2) BE ORDERED TO REFUND ALL IMPROPERLY SOLICITED PUBLIC
12 SAFETY CONTRIBUTIONS TO THE DONORS WHO MADE SUCH CONTRIBUTIONS.

13 6-5A-11.

14 (A) A PERSON WHO COMMITS A WILLFUL VIOLATION OF THIS SUBTITLE:

15 (1) IS GUILTY OF A MISDEMEANOR;

16 (2) IS SUBJECT, ON CONVICTION, TO A FINE NOT EXCEEDING THREE
17 TIMES THE VALUE OF THE TOTAL GROSS AMOUNT OF FUNDS SOLICITED BY THE
18 PUBLIC SAFETY SOLICITOR OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH;
19 AND

20 (3) SHALL FORFEIT TO THE SECRETARY OF STATE THE BOND REQUIRED
21 IN § 6-5A-03 OF THIS SUBTITLE.

22 (B) A PERSON WHO COMMITS A GROSSLY NEGLIGENT VIOLATION OF THIS
23 SUBTITLE:

24 (1) IS GUILTY OF A MISDEMEANOR;

25 (2) IS SUBJECT, ON CONVICTION, TO A FINE NOT EXCEEDING THE GROSS
26 AMOUNT OF FUNDS SOLICITED BY THE PUBLIC SAFETY SOLICITOR OR LIABILITY FOR
27 RESTITUTION THAT THE COURT DETERMINES OR BOTH; AND

28 (3) SHALL FORFEIT TO THE SECRETARY OF STATE THE BOND REQUIRED
29 IN § 6-5A-03 OF THIS SUBTITLE.

30 6-701.

31 This title is the Maryland [Charitable] Solicitations Act.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2000.