

---

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

Requested: November 8, 1995

Introduced and read first time: January 10, 1996

Assigned to: Judicial Proceedings

---

A BILL ENTITLED

1 AN ACT concerning

2 **Charitable Solicitation**

3 FOR the purpose of repealing certain restrictions on the registration exemption of certain  
4 charitable organizations; allowing the Secretary of State to make available a disk  
5 containing computerized data to further the Charitable Giving Information  
6 Program; clarifying that the Secretary of State may investigate possible violations of  
7 the Maryland Charitable Solicitations Act; providing that the Secretary of State may  
8 appoint a designee for certain purposes; providing that the Secretary of State may  
9 take certain actions if the Secretary has reasonable grounds to believe the Maryland  
10 Charitable Solicitations Act has been violated; providing that the Secretary of State  
11 may enter into a written assurance of voluntary compliance or other agreement with  
12 an apparent violator of the Maryland Charitable Solicitations Act; providing that a  
13 professional solicitor that submits a \$25,000 irrevocable letter of credit to the  
14 Secretary of State need not submit a \$25,000 surety bond; providing that the bond  
15 submitted by a professional solicitor shall cover the activities of certain persons, or  
16 the professional solicitor shall obtain separate bonds for those persons; clarifying  
17 that a person who has acted as a professional solicitor before applying to register as  
18 a professional solicitor shall submit a certain accounting with the application;  
19 requiring that certain contracts be filed with the Secretary of State; altering certain  
20 definitions; and generally relating to charitable solicitation.

21 BY repealing and reenacting, with amendments,

22 Article - Business Regulation

23 Section 6-101(c), (f), and (h)(1), 6-102(c)(1), 6-201, 6-205, 6-303,6-306, 6-410,

24 and 6-501(a) and (b)

25 Annotated Code of Maryland

26 (1992 Volume and 1995 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

28 MARYLAND, That the Laws of Maryland read as follows:

2

1 **Article - Business Regulation**

2 6-101.

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

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

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

8 (i) an unsolicited gift;

9 (ii) [a corporation or foundation grant;

10 (iii)] a government grant or government money;

11 [(iv)] (III) membership assessments, dues, or fines; and

12 [(v)] (IV) a payment for property sold or services rendered by a  
13 charitable organization, unless the property is sold or the services are rendered in  
14 connection with a charitable solicitation.

15 (f) (1) "Charitable solicitation" means an oral or written request for a  
16 charitable contribution, regardless of whether the person who makes therequest receives  
17 the charitable contribution.

18 (2) "Charitable solicitation" includes:

19 (i) a fund-raising drive, event, campaign, or other activity;

20 (ii) an announcement to the news media seeking charitable  
21 contributions;

22 (iii) except where the services are [bought by a charitable organization  
23 or] provided to a charitable organization as a public service, the distribution of a written  
24 advertisement or other publication that, directly or implicitly, seeks charitable  
25 contributions; and

26 (iv) the sale of, or offer or attempt to sell an admission, advertisement,  
27 advertising space, book card, chance, coupon, device, magazine, membership,  
28 merchandise, patron listing, subscription, tag, ticket, or other tangible item in connection  
29 with which:

30 1. an appeal is made for charitable contributions;

31 2. the name of a charitable organization is used expressly or  
32 implicitly to induce a purchase; or

33 3. a statement is made that some or all of the proceeds from the  
34 sale are to be used for a charitable purpose.

35 (h) (1) "Fund-raising counsel" means a person who, for pay:

3

1 (i) advises a charitable organization about a charitable solicitation IN  
2 MARYLAND or holds, plans, or manages a charitable solicitation IN MARYLAND; but

3 (ii) does not directly solicit or receive charitable contributions from  
4 the public.

5 6-102.

6 (c) (1) Except as provided in paragraph (2) of this subsection, a charitable  
7 organization is exempt from the requirements of this title if the charitable organization:

8 (i) does not employ a professional solicitor; and

9 (ii) 1. solicits charitable contributions for a named individual and  
10 the gross amount is delivered to the individual;

11 2. A. is a religious organization, a parent organization of a  
12 religious organization, or a school affiliated with a religious organization; and

13 B. has in effect a declaration of tax-exempt status from the  
14 government of the United States;

15 3. solicits charitable contributions only from its members; or

16 4. does not receive more than \$25,000 in charitable  
17 contributions from the public during the year for which a registration statement and  
18 annual report otherwise would be required[, if:

19 A. all its charitable solicitations are done by volunteers; and

20 B. no part of its assets or income inures to the benefit of or is  
21 paid to an officer or member of the charitable organization].

22 6-201.

23 (a) In this section, "Program" means the Charitable Giving Information Program.

24 (b) There is a Charitable Giving Information Program in the Office of the  
25 Secretary of State.

26 (c) The purpose of the Program is to educate the public about charitable  
27 organizations and charitable solicitations so that members of the public can:

28 (1) recognize unlawful or misleading charitable solicitations; and

29 (2) make informed decisions about charitable contributions to charitable  
30 organizations.

31 (d) The Program shall inform the public of:

32 (1) the laws and regulations about charitable organizations and charitable  
33 solicitations, including registration requirements, prohibited acts and penalties, and the  
34 availability of information through the Office of the Secretary of State;

35 (2) the importance of reporting alleged unlawful or misleading charitable  
36 solicitations to the Office of the Secretary of State;

4

1 (3) an address and toll-free telephone number through which the public can  
2 get information about charitable organizations and charitable solicitations and can report  
3 alleged violations of this title;

4 (4) precautions an individual may take before making a charitable  
5 contribution to a charitable organization; and

6 (5) any other information the Secretary of State believes will help the public  
7 make informed decisions about charitable contributions to charitable organizations.

8 (e) The Program shall make available:

9 (1) written materials, in places easily accessible to the public, including  
10 libraries, schools, and other public buildings;

11 (2) on request, individuals to speak to community groups or other groups;  
12 and

13 (3) material for broad distribution to the public or for use by the news  
14 media.

15 (F) (1) THE PROGRAM MAY MAKE AVAILABLE A DISK CONTAINING  
16 COMPUTERIZED DATA IF:

17 (I) THE SECRETARY OF STATE DETERMINES THAT MAKING THE  
18 DISK AVAILABLE SERVES THE PURPOSES OF THE PROGRAM; AND

19 (II) THE PERSON AGREES IN WRITING TO USE THE DISK ONLY FOR  
20 PURPOSES APPROVED BY THE SECRETARY OF STATE, AND NOT TO COPY THE DISK,  
21 OR PERMIT THE DISK TO BE COPIED, WITHOUT THE PRIOR WRITTEN CONSENT OF  
22 THE SECRETARY OF STATE.

23 (2) THE SECRETARY OF STATE MAY CHARGE A REASONABLE FEE FOR A  
24 DISK UNDER THIS SECTION.

25 6-205.

26 (a) (1) The Secretary of State OR THE SECRETARY'S DESIGNEE may  
27 investigate an alleged OR POSSIBLE violation of this title.

28 (2) (i) In the course of any examination, investigation, or hearing, the  
29 Secretary of State OR THE SECRETARY'S DESIGNEE may subpoena witnesses, administer  
30 oaths, examine an individual under oath, and compel production of records, books,  
31 papers, and other documents.

32 (ii) Information obtained under this subsection is not admissible in a  
33 subsequent criminal proceeding against the person who provided the information.

34 (b) If the Secretary of State finds OR HAS REASONABLE GROUNDS TO BELIEVE  
35 that a charitable organization or charitable representative has violated this title, the  
36 Secretary of State may take 1 or more of the following actions:

37 (1) BY METHODS OF CONFERENCE AND PERSUASION WITH THE  
38 APPARENT VIOLATORS AND ANY REPRESENTATIVES THEY MAY CHOOSE TO ASSIST

5

1 THEM, ENTER INTO A WRITTEN ASSURANCE OF DISCONTINUANCE, WRITTEN  
2 ASSURANCE OF VOLUNTARY COMPLIANCE, OR OTHER SETTLEMENT AGREEMENT  
3 WITH THE APPARENT VIOLATORS, IN ACCORDANCE WITH SUBSECTION (C) OF THIS  
4 SECTION;

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

7 (i) finds that the public health, safety, or welfare requires emergency  
8 action; and

9 (ii) gives the violator written notice of the order, the reasons for the  
10 order, and the right of the violator to request a hearing under subsection (d) of this  
11 section; or

12 [(2)] (3) refer the matter to:

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

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

15 (C) A SETTLEMENT AGREEMENT UNDER SUBSECTION (B)(1) MAY INCLUDE  
16 ONE OR MORE OF THE FOLLOWING STIPULATIONS OR CONDITIONS:

17 (1) PAYMENT BY THE APPARENT VIOLATOR OF THE COST OF THE  
18 INVESTIGATION, AND THE COST OF NEGOTIATING AND PREPARING THE  
19 SETTLEMENT AGREEMENT;

20 (2) PAYMENT BY THE APPARENT VIOLATOR OF CIVIL PENALTIES A  
21 COURT COULD ORDER UNDER THIS TITLE;

22 (3) PAYMENT BY THE APPARENT VIOLATOR OF REFUNDS TO DONORS A  
23 COURT COULD ORDER UNDER THIS TITLE;

24 (4) PAYMENT BY THE APPARENT VIOLATOR OF CONTRIBUTIONS  
25 RECEIVED TO CHARITABLE BENEFICIARIES OR FOR CHARITABLE PURPOSES  
26 CONSISTENT WITH THE BENEFICIARIES NAMED OR PURPOSES REPRESENTED IN THE  
27 CHARITABLE SOLICITATIONS WHICH GENERATED THE CONTRIBUTIONS; OR

28 (5) ANY OTHER STIPULATION, CONDITION, OR REMEDY THAT WILL  
29 CORRECT A VIOLATION OF THIS TITLE.

30 (D) AN AGREEMENT UNDER THIS SECTION IS FOR CONCILIATION PURPOSES  
31 ONLY AND DOES NOT CONSTITUTE AN ADMISSION BY ANY PARTY THAT THE LAW  
32 HAS BEEN VIOLATED.

33 (E) (1) IT IS A VIOLATION OF THIS TITLE TO FAIL TO ADHERE TO ANY  
34 PROVISION CONTAINED IN A SETTLEMENT AGREEMENT.

35 (2) A FAILURE OF THE SECRETARY OF STATE TO ENFORCE A  
36 VIOLATION OF ANY PROVISION OF A SETTLEMENT AGREEMENT DOES NOT  
37 CONSTITUTE A WAIVER OF THAT OR ANY OTHER PROVISION, OR OF ANY RIGHT OF  
38 THE SECRETARY OF STATE.

6

1 [(c)] (F) On referral by the Secretary of State, the Attorney General may sue in  
2 the Circuit Court for Anne Arundel County for an order that:

3 (1) restrains further violation of this title;

4 (2) restrains the defendant from making further charitable solicitations in  
5 the State;

6 (3) recovers for the State a civil penalty not to exceed \$5,000for each willful  
7 violation of the Act;

8 (4) recovers for the State a civil penalty not to exceed \$3,000for each grossly  
9 negligent violation of the Act;

10 (5) enforces compliance with this title; or

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

12 (i) refunds to donors; and

13 (ii) payment of the charitable contributions received by the solicitor to  
14 charitable purposes or beneficiaries consistent with the purposes represented or  
15 beneficiaries named in the charitable solicitations which generated thecontributions.

16 [(d)] (G) (1) If the Secretary of State issues a cease and desist order to a person,  
17 the person may request a hearing from the Secretary of State.

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

20 6-303.

21 (a) (1) [On] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION,  
22 ON applying for registration as a professional solicitor, an applicant shall execute and  
23 submit to the Secretary of State a bond in the sum of \$25,000, with surety that the  
24 Secretary of State approves.

25 (2) The bond shall run to the State for the use of the State and each person  
26 who may have a cause of action against the applicant for loss resultingfrom malfeasance,  
27 nonfeasance, or misfeasance in the applicant's charitable solicitation.

28 (3) The applicant shall keep the bond in force as long as the registration is  
29 in effect.

30 (b) An applicant for registration as a professional solicitor [may] SHALL submit  
31 a consolidated bond OR SEPARATE BONDS for all of the officers, agents, members,  
32 associate solicitors, SUBCONTRACTORS, and employees of the professionalsolicitor.

33 (C) AN APPLICANT FOR REGISTRATION AS A PROFESSIONAL SOLICITOR THAT  
34 SUBMITS A \$25,000 IRREVOCABLE LETTER OF CREDIT TO THE SECRETARY OF STATE  
35 IS NOT REQUIRED TO SUBMIT A SURETY BOND UNDER SUBSECTION (A) OF THIS  
36 SECTION.

7

1 6-306.

2 (A) If a currently registered professional solicitor applies for a new registration  
3 and has not yet submitted the accounting required by § 6-506 of this title, the professional  
4 solicitor shall submit with the new application:

5 (1) that accounting; or

6 (2) an interim accounting, under oath and in a form that the Secretary of  
7 State requires, that accounts for all money received and disbursed for each fund-raising  
8 drive, campaign, or event through a date within 3 months before the professional  
9 solicitor's current registration expires.

10 (B) A PERSON THAT ACTS AS A PROFESSIONAL SOLICITOR BEFORE APPLYING  
11 TO REGISTER AS A PROFESSIONAL SOLICITOR THAT HAS NOT SUBMITTED AN  
12 ACCOUNTING UNDER § 6-506 OF THIS TITLE, SHALL SUBMIT WITH THE  
13 PROFESSIONAL SOLICITOR APPLICATION:

14 (1) THAT ACCOUNTING; OR

15 (2) AN INTERIM ACCOUNTING, UNDER OATH, AND IN A FORM THAT THE  
16 SECRETARY OF STATE REQUIRES, THAT ACCOUNTS FOR ALL MONEY RECEIVE AND  
17 DISBURSED FOR EACH FUND-RAISING DRIVE, CAMPAIGN, OR EVENT THROUGH A  
18 DATE WITHIN 3 MONTHS BEFORE THE PERSON FILED A PROFESSIONAL SOLICITOR  
19 APPLICATION.

20 6-410.

21 (a) Within 30 days after receiving a request, a charitable organization shall mail a  
22 current financial statement at no charge to the person who requested it.

23 (b) The financial statement shall contain:

24 (1) the name, address, and telephone number of the charitable organization;

25 (2) (i) THE AMOUNT OF TOTAL REVENUE, the amount of [gross]  
26 TOTAL revenue received from charitable contributions, and the amount and percentage  
27 of [gross] TOTAL revenue used by the charitable organization for its management and  
28 general expenses, fund-raising expenses, and program service expenses during the  
29 preceding fiscal year; or

30 (ii) if the charitable organization is newly organized, the estimated  
31 percentage of charitable contributions being sought that will be used for its management  
32 and general expenses, fund-raising expenses, and program service expenses; and

33 (3) if the charitable organization is registered with the Secretary of State, a  
34 declaration that the charitable organization is registered, but that registration is not and  
35 does not imply endorsement of any charitable solicitation.

36 6-501.

37 (a) An agreement between a charitable organization and a fund-raising counsel  
38 or professional solicitor AND ANY SUBCONTRACT OR OTHER CONTRACT IN  
39 FURTHERANCE OF SUCH AN AGREEMENT shall be in writing.

8

1 (b) A fund-raising counsel or professional solicitor shall submit to the Secretary  
2 of State a copy of [the agreement] ALL AGREEMENTS UNDER SUBSECTION (A) on or  
3 before the earlier of:

4 (1) the tenth day after the agreement is made; or

5 (2) the start of a charitable solicitation.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
7 October 1, 1996.