

(PRE-FILED)

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

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Committee Report: Favorable with amendments

Senate action: Adopted

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CHAPTER ____

1 AN ACT concerning

2 **Charitable Solicitation**

3 [TAG ftpo]FOR the purpose of repealing certain restrictions on the ~~registration~~ exemption of certain
4 charitable organizations from the requirements of the Maryland Charitable
5 Solicitations Act; exempting certain charitable organizations that only receive
6 contributions from certain corporations and organizations; allowing the Secretary of
7 State to make available for a certain fee a disk containing computerized data to
8 further the Charitable Giving Information Program; ~~clarifying that~~ authorizing the
9 Secretary of State ~~may to~~ investigate possible violations of the Maryland Charitable
10 Solicitations Act; providing that the Secretary of State may appoint a designee for
11 certain purposes; providing that the Secretary of State may take certain actions if
12 the Secretary has reasonable grounds to believe the Maryland Charitable
13 Solicitations Act has been violated; providing that the Secretary of State may enter
14 into a written assurance of voluntary compliance or other agreement with an
15 apparent violator of the Maryland Charitable Solicitations Act; altering the
16 circumstances under which the Secretary may summarily issue a cease and desist
17 order; providing that a professional solicitor that submits a \$25,000 irrevocable
18 letter of credit to the Secretary of State need not submit a \$25,000 surety bond;
19 providing that the bond submitted by a professional solicitor shall cover the
20 activities of certain persons; ~~or the professional solicitor shall obtain separate bonds~~
21 ~~for those persons;~~ clarifying that requiring a person who has acted as a professional
22 solicitor before applying to register as a professional solicitor ~~shall to~~ submit a
23 certain accounting with the application; altering the contents of the financial
24 statement that a charitable organization is required to provide upon request;
25 exempting certain grant applications from a certain disclosure statement
26 requirement; requiring that certain contracts be filed with the Secretary of State;
27 providing immunity from certain liability for certain television or radio broadcasting

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1 stations and certain publishers and printers under certain circumstances; altering
2 certain definitions; and generally relating to charitable solicitation.

3 BY repealing and reenacting, with amendments,

4 Article - Business Regulation

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

6 6-410, ~~6-411~~, and 6-501(a) and (b)

7 Annotated Code of Maryland

8 (1992 Volume and 1995 Supplement)

9 BY adding to

10 Article - Business Regulation

11 Section 6-621

12 Annotated Code of Maryland

13 (1992 Volume and 1995 Supplement)

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

16 **Article - Business Regulation**

17 6-101.

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

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

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

23 (i) an unsolicited gift;

24 (ii) [a corporation or foundation grant;

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

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

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

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

33 (2) "Charitable solicitation" includes:

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

35 (ii) an announcement to the news media seeking charitable
36 contributions;

3

1 (iii) except ~~where the services are [bought by a charitable organization~~
2 ~~or] provided to a charitable organization as a public service~~ AS PROVIDED IN § 6-621 OF
3 THIS TITLE, the distribution of a written advertisement or other publication that, directly
4 or implicitly, seeks charitable contributions; and

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

- 9 1. an appeal is made for charitable contributions;
- 10 2. the name of a charitable organization is used expressly or
11 implicitly to induce a purchase; or
- 12 3. a statement is made that some or all of the proceeds from the
13 sale are to be used for a charitable purpose.

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

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

17 (ii) does not directly solicit or receive charitable contributions from
18 the public.

19 (2) "Fund-raising counsel" does not include:

20 (i) an attorney because of giving legal advice;

21 (ii) an attorney, investment counselor, or banker because of advising a
22 client or customer to contribute to a charitable organization; [or]

23 (iii) a salaried officer or employee of a charitable organization that
24 keeps a permanent office in the State; OR

25 (IV) A PERSON WHO PREPARES A GRANT PROPOSAL FOR
26 SUBMISSION TO A SPECIFIC CHARITABLE ORGANIZATION, CORPORATION, OR
27 FOUNDATION.

28 6-102.

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

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

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

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

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

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1 3. solicits charitable contributions only from its members; ~~or~~

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

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

6 B. no part of its assets or income inures to the benefit of or is
7 paid to an officer or member of the charitable organization]; OR

8 5. ONLY RECEIVES CONTRIBUTIONS FROM FOR-PROFIT
9 CORPORATIONS AND ORGANIZATIONS DETERMINED TO BE PRIVATE FOUNDATIONS
10 BY THE GOVERNMENT OF THE UNITED STATES.

11 6-201.

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

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

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

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

18 (2) make informed decisions about charitable contributions to charitable
19 organizations.

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

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

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

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

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

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

33 (e) The Program shall make available:

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

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

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

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

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

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

13 (2) (I) THE SECRETARY OF STATE MAY CHARGE A REASONABLE FEE
14 FOR A DISK UNDER THIS SECTION.

15 (II) THE FEE MAY NOT EXCEED THE ACTUAL COST OF
16 PURCHASING AND PREPARING THE DISK.

17 6-205.

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

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

24 (ii) IN THE COURSE OF ANY EXAMINATION, INVESTIGATION, OR
25 HEARING, A DESIGNEE OF THE SECRETARY OF STATE MAY ADMINISTER OATHS AND
26 EXAMINE AN INDIVIDUAL UNDER OATH.

27 (III) Information obtained under this subsection is not admissible in a
28 subsequent criminal proceeding against the person who provided the information.

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

32 (1) BY METHODS OF CONFERENCE AND PERSUASION WITH THE
33 APPARENT VIOLATORS AND ANY REPRESENTATIVES THEY MAY CHOOSE TO ASSIST
34 THEM, ENTER INTO A WRITTEN ASSURANCE OF DISCONTINUANCE, WRITTEN
35 ASSURANCE OF VOLUNTARY COMPLIANCE, OR OTHER SETTLEMENT AGREEMENT
36 WITH THE APPARENT VIOLATORS, IN ACCORDANCE WITH SUBSECTION (C) OF THIS
37 SECTION;

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

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1 (i) finds THAT THIS TITLE HAS BEEN VIOLATED AND that the public
2 health, safety, or welfare requires emergency action; and

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

6 [(2)] (3) refer the matter to:

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

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

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

11 (1) PAYMENT BY THE APPARENT VIOLATOR OF THE COST OF THE
12 INVESTIGATION, ~~AND THE COST OF NEGOTIATING AND PREPARING THE~~
13 ~~SETTLEMENT AGREEMENT;~~

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

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

18 (4) PAYMENT BY THE APPARENT VIOLATOR OF CONTRIBUTIONS
19 RECEIVED TO CHARITABLE BENEFICIARIES OR FOR CHARITABLE PURPOSES
20 CONSISTENT WITH THE BENEFICIARIES NAMED OR PURPOSES REPRESENTED IN THE
21 CHARITABLE SOLICITATIONS WHICH GENERATED THE CONTRIBUTIONS; OR

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

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

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

29 (2) A FAILURE OF THE SECRETARY OF STATE TO ENFORCE A
30 VIOLATION OF ANY PROVISION OF A SETTLEMENT AGREEMENT DOES NOT
31 CONSTITUTE A WAIVER OF THAT OR ANY OTHER PROVISION, OR OF ANY RIGHT OF
32 THE SECRETARY OF STATE.

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

35 (1) restrains further violation of this title;

36 (2) restrains the defendant from making further charitable solicitations in
37 the State;

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

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

5 (5) enforces compliance with this title; or

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

7 (i) refunds to donors; and

8 (ii) payment of the charitable contributions received by the solicitor to
9 charitable purposes or beneficiaries consistent with the purposes represented or
10 beneficiaries named in the charitable solicitations which generated the contributions.

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

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

15 6-303.

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

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

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

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

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

32 6-306.

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

36 (1) that accounting; or

37 (2) an interim accounting, under oath and in a form that the Secretary of
38 State requires, that accounts for all money received and disbursed for each fund-raising

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1 drive, campaign, or event through a date within 3 months before the professional
2 solicitor's current registration expires.

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

7 (1) THAT ACCOUNTING; OR

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

13 6-410.

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

16 (b) The financial statement shall contain:

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

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

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

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

29 6-411.

30 (a) This section does not apply to:

31 (1) a charitable solicitation by an accredited school, college, or university to
32 its students, former students, parents of students or former students, board members, or
33 staff; OR

34 (2) A FORMAL GRANT APPLICATION PREPARED FOR AND SUBMITTED
35 TO A SPECIFIC CORPORATION OR FOUNDATION.

36 (b) (1) A charitable solicitation that is a specific written request to the public
37 for money shall contain a disclosure statement.

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1 (2) A written receipt for a charitable contribution shall contain a disclosure
2 statement.

3 (c) The disclosure statement shall be displayed conspicuously on a charitable
4 solicitation and on a receipt for a charitable contribution.

5 6-501.

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

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

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

13 (2) the start of a charitable solicitation.

14 6-621.

15 A TELEVISION OR RADIO BROADCASTING STATION OR A PUBLISHER OR
16 PRINTER OF A NEWSPAPER, MAGAZINE, OR OTHER FORM OF PRINTED ADVERTISING
17 THAT BROADCASTS, PUBLISHES, OR PRINTS A CHARITABLE SOLICITATION THAT
18 VIOLATES THIS TITLE IS NOT LIABLE FOR THE VIOLATION, UNLESS THE STATION,
19 PUBLISHER, OR PRINTER HAS KNOWLEDGE THAT THE CHARITABLE SOLICITATION
20 VIOLATES THIS TITLE.

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