

SENATE BILL 71

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2000 Regular Session
0lr0141

(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

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Solicitations Act**

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

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

17 BY adding to
18 Article - Business Regulation
19 Section 6-101(j), (k), and (l); and 6-5A-01 through 6-5A-11, inclusive, to be
20 under the new subtitle "Subtitle 5A. Public Safety Solicitors"
21 Annotated Code of Maryland
22 (1998 Replacement Volume and 1999 Supplement)

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

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
6 enforceable 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 government grant or government money;

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

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

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

16 (J) "PUBLIC SAFETY CONTRIBUTION" MEANS A CONTRIBUTION MADE ON A
17 REPRESENTATION THAT IT WILL BE USED FOR THE PURPOSES OF A PUBLIC SAFETY
18 ORGANIZATION.

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

22 (L) (1) "PUBLIC SAFETY SOLICITOR" MEANS A PERSON WHO, FOR PAY,
23 SOLICITS OR RECEIVES PUBLIC SAFETY CONTRIBUTIONS, PERSONALLY OR THROUGH
24 ANOTHER.

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

26 (I) AN ATTORNEY, INVESTMENT COUNSELOR, OR BANKER
27 BECAUSE OF ADVISING A CLIENT OR CUSTOMER TO MAKE A PUBLIC SAFETY
28 CONTRIBUTION; OR

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

32 6-102.

33 (b) (1) [This] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
34 SUBSECTION, THIS title does not apply to fund-raising by a volunteer organization of

1 fire fighters or rescue or ambulance personnel for its ambulance, fire fighting, or
2 rescue operations.

3 (2) THIS TITLE APPLIES TO A PUBLIC SAFETY SOLICITOR EMPLOYED BY
4 A VOLUNTEER ORGANIZATION OF FIRE FIGHTERS OR RESCUE OR AMBULANCE
5 PERSONNEL.

6 6-205.

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

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

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

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

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

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

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

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

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

32 (3) refer the matter to:

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

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

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

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

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

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

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

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

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

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

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

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

21 (1) restrains further violation of this title;

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

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

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

29 (5) enforces compliance with this title; or

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

31 (i) refunds to donors; and

32 (ii) payment of the charitable OR PUBLIC SAFETY contributions
33 received by the solicitor to charitable OR PUBLIC SAFETY purposes or beneficiaries
34 consistent with the purposes represented or beneficiaries named in the charitable OR
35 PUBLIC SAFETY solicitations which generated the contributions.

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

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

6 SUBTITLE 5A. PUBLIC SAFETY SOLICITORS.

7 6-5A-01.

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

10 6-5A-02.

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

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

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

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

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

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

29 (5) PROVIDE ANY OTHER INFORMATION THAT THE SECRETARY OF
30 STATE REQUIRES.

31 6-5A-03.

32 (A) (1) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (F) OF THIS SECTION,
33 ON APPLYING FOR REGISTRATION AS A PUBLIC SAFETY SOLICITOR, AN APPLICANT
34 SHALL EXECUTE AND SUBMIT TO THE SECRETARY OF STATE A BOND IN THE SUM OF
35 \$25,000, WITH SURETY THAT THE SECRETARY OF STATE APPROVES.

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

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

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

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

14 (1) 3 YEARS HAVE PASSED SINCE THE REGISTRATION PERIOD TO WHICH
15 THE BOND OR LETTER APPLIES, AND THERE IS NO PENDING CLAIM AGAINST THE
16 BOND OR LETTER; OR

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

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

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

30 6-5A-04.

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

34 (B) IF THE SECRETARY OF STATE FINDS THAT AN APPLICANT FOR
35 REGISTRATION HAS NOT COMPLIED WITH THIS TITLE AND THE REGULATIONS
36 ADOPTED UNDER IT APPLICABLE TO REGISTRATION, THE SECRETARY OF STATE
37 SHALL NOTIFY THE APPLICANT OF THE REASONS THE APPLICANT IS NOT IN
38 COMPLIANCE.

1 6-5A-05.

2 EACH REGISTRATION EXPIRES ON THE FIRST ANNIVERSARY OF ITS APPROVAL
3 DATE.

4 6-5A-06.

5 A PUBLIC SAFETY SOLICITOR SHALL INCLUDE IN ALL WRITTEN SOLICITATIONS
6 AND RECEIPTS FOR PUBLIC SAFETY CONTRIBUTIONS:

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

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

14 (3) THE ADDRESS AND THE TELEPHONE NUMBER OF THE SECRETARY
15 OF STATE.

16 6-5A-07.

17 A PUBLIC SAFETY SOLICITOR MAY NOT SOLICIT PUBLIC SAFETY
18 CONTRIBUTIONS UNLESS:

19 (1) THE SCRIPT OF AN ORAL SOLICITATION AND A COPY OF A WRITTEN
20 SOLICITATION SHALL:

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

23 (II) INCLUDE:

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

26 2. A STATEMENT THAT THE PERSON WHO SOLICITS PUBLIC
27 SAFETY CONTRIBUTIONS IS A PAID FUND-RAISER.

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

31 6-5A-08.

32 A PUBLIC SAFETY SOLICITOR MAY NOT:

33 (1) FALSELY STATE, IMPLY, OR MISLEAD, DIRECTLY OR INDIRECTLY, THE
34 PERSON SOLICITED FOR A PUBLIC SAFETY CONTRIBUTION THAT THE PUBLIC SAFETY

1 SOLICITOR IS A FIRE FIGHTING, AMBULANCE, RESCUE, POLICE, FRATERNAL, OR
2 OTHER LAW ENFORCEMENT EMPLOYEE OR MEMBER;

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

7 (I) PHOTO IDENTIFICATION; AND

8 (II) CORRESPONDENCE FROM THE PUBLIC SAFETY ORGANIZATION
9 AUTHORIZING THE PUBLIC SAFETY SOLICITOR TO SOLICIT ON BEHALF OF THE
10 PUBLIC SAFETY ORGANIZATION FOR A STATED PERIOD OF TIME;

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

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

21 6-5A-09.

22 (A) AN APPLICANT FOR REGISTRATION AS A PUBLIC SAFETY SOLICITOR OR A
23 REGISTERED PUBLIC SAFETY SOLICITOR MAY NOT WILLFULLY OR IN A GROSSLY
24 NEGLIGENT WAY:

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

27 (2) COMMIT A VIOLATION OF THIS SUBTITLE.

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

31 6-5A-10.

32 (A) A PERSON THAT ENGAGES IN SOLICITING PUBLIC SAFETY
33 CONTRIBUTIONS WITHOUT PRIOR APPLICATION FOR REGISTRATION AS A PUBLIC
34 SAFETY SOLICITOR IS GUILTY OF A MISDEMEANOR AND, ON CONVICTION, IS
35 SUBJECT TO A FINE NOT EXCEEDING 10 TIMES THE VALUE OF THE TOTAL AMOUNT
36 OF FUNDS IMPROPERLY SOLICITED OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR
37 BOTH.

1 (B) A PERSON CONVICTED OF A VIOLATION OF THIS SECTION SHALL:

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

4 (2) REFUND ALL IMPROPERLY SOLICITED PUBLIC SAFETY
5 CONTRIBUTIONS TO THE DONORS WHO MADE SUCH CONTRIBUTIONS.

6 6-5A-11.

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

8 (1) IS GUILTY OF A MISDEMEANOR;

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

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

15 (B) A PERSON WHO COMMITS A GROSSLY NEGLIGENT VIOLATION OF THIS
16 SUBTITLE:

17 (1) IS GUILTY OF A MISDEMEANOR;

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

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

23 6-701.

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

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