

# HOUSE BILL 311

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CF SB 266

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By: **The Speaker (By Request – Administration) and Delegates Barnes, Feldman, Frick, and Lee**

Introduced and read first time: January 29, 2009

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Public Safety – Department of State Police – Investigations Affecting First**  
3 **Amendment Rights**

4 FOR the purpose of requiring that a covert investigation of a certain person, group, or  
5 organization be based on a reasonable suspicion that the person, group, or  
6 organization is planning, or engaged in, criminal activity; authorizing that the  
7 investigation be conducted only under certain circumstances; requiring the  
8 Department of State Police to conduct all investigations involving certain  
9 activities for a legitimate law enforcement objective; requiring the Department  
10 to safeguard certain rights of all persons; prohibiting the Department from  
11 conducting certain activities for certain purposes; requiring the Department to  
12 terminate a certain investigation under certain circumstances; prohibiting the  
13 Department from collecting certain information under certain circumstances;  
14 requiring the Department to classify accurately certain information; authorizing  
15 the Department to disseminate certain information in a certain manner;  
16 prohibiting the Department from knowingly including certain information in  
17 certain files; providing for the construction of this Act; defining certain terms;  
18 and generally relating to investigations affecting First Amendment rights  
19 conducted by the Department of State Police.

20 BY adding to

21 Article – Public Safety

22 Section 2–314

23 Annotated Code of Maryland

24 (2003 Volume and 2008 Supplement)

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

27 **Article – Public Safety**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **2-314.**

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
3 MEANINGS INDICATED.

4 (2) "COVERT INVESTIGATION" MEANS AN INFILTRATION OF OR  
5 ATTEMPT TO INFILTRATE A GROUP OR ORGANIZATION.

6 (3) "FIRST AMENDMENT ACTIVITIES" MEANS:

7 (I) ACTIVITIES INVOLVING CONSTITUTIONALLY  
8 PROTECTED SPEECH OR ASSOCIATION; OR

9 (II) CONDUCT RELATED TO FREEDOM OF SPEECH, FREE  
10 EXERCISE OF RELIGION, FREEDOM OF THE PRESS, THE RIGHT TO ASSEMBLE, OR  
11 THE RIGHT TO PETITION THE GOVERNMENT.

12 (B) (1) THIS SECTION ESTABLISHES THE RESPONSIBILITIES OF THE  
13 DEPARTMENT RELATING TO INVESTIGATIONS AFFECTING FIRST AMENDMENT  
14 ACTIVITIES.

15 (2) THIS SECTION DOES NOT APPLY TO INVESTIGATIONS THAT DO  
16 NOT INVOLVE FIRST AMENDMENT ACTIVITIES.

17 (C) A COVERT INVESTIGATION OF A PERSON, A GROUP, OR AN  
18 ORGANIZATION ENGAGED IN FIRST AMENDMENT ACTIVITIES SHALL BE:

19 (1) BASED ON A REASONABLE SUSPICION THAT THE PERSON,  
20 GROUP, OR ORGANIZATION IS PLANNING OR ENGAGED IN CRIMINAL ACTIVITY;  
21 AND

22 (2) SHALL BE CONDUCTED ONLY IF A LESS INTRUSIVE METHOD  
23 OF INVESTIGATION IS NOT LIKELY TO YIELD EQUIVALENT RESULTS.

24 (D) THE DEPARTMENT SHALL:

25 (1) CONDUCT ALL INVESTIGATIONS INVOLVING FIRST  
26 AMENDMENT ACTIVITIES FOR A LEGITIMATE LAW ENFORCEMENT OBJECTIVE;  
27 AND

28 (2) IN THE PROCESS OF CONDUCTING AN INVESTIGATION,  
29 SAFEGUARD THE CONSTITUTIONAL RIGHTS AND LIBERTIES OF ALL PERSONS.

1           **(E) THE DEPARTMENT MAY NOT INVESTIGATE, PROSECUTE, DISRUPT,**  
2 **INTERFERE WITH, HARASS, OR DISCRIMINATE AGAINST A PERSON ENGAGED IN**  
3 **A FIRST AMENDMENT ACTIVITY FOR THE PURPOSE OF PUNISHING,**  
4 **RETALIATING, PREVENTING, OR HINDERING THE PERSON FROM EXERCISING**  
5 **CONSTITUTIONAL RIGHTS.**

6           **(F) AN INVESTIGATION INVOLVING FIRST AMENDMENT ACTIVITIES**  
7 **SHALL BE TERMINATED WHEN LOGISTICAL LEADS HAVE BEEN EXHAUSTED AND**  
8 **NO LEGITIMATE LAW ENFORCEMENT PURPOSE JUSTIFIES THE CONTINUANCE**  
9 **OF THE INVESTIGATION.**

10           **(G) THE DEPARTMENT MAY NOT COLLECT INFORMATION BASED**  
11 **SOLELY ON THE BELIEFS, ACTIVITIES, AND ASSOCIATIONS OF INDIVIDUALS**  
12 **THAT IS NOT RELEVANT TO A CRIMINAL INVESTIGATION OR THE GATHERING OF**  
13 **CRIMINAL INTELLIGENCE.**

14           **(H) (1) THE DEPARTMENT SHALL CLASSIFY ACCURATELY**  
15 **INTELLIGENCE INFORMATION IN ITS DATABASES TO REFLECT PROPERLY THE**  
16 **PURPOSE FOR WHICH THE INFORMATION IS COLLECTED.**

17           **(2) WHEN THE DEPARTMENT LISTS IN A DATABASE A SPECIFIC**  
18 **CRIME FOR WHICH AN INDIVIDUAL, A GROUP, OR AN ORGANIZATION IS UNDER**  
19 **SUSPICION, THE DEPARTMENT SHALL ENSURE THAT THE CLASSIFICATION IS**  
20 **ACCURATE BASED ON THE INFORMATION AVAILABLE TO THE DEPARTMENT AT**  
21 **THE TIME.**

22           **(I) INFORMATION GATHERED AND MAINTAINED BY THE DEPARTMENT**  
23 **FOR INTELLIGENCE PURPOSES MAY BE DISSEMINATED ONLY TO APPROPRIATE**  
24 **PERSONS FOR LEGITIMATE LAW ENFORCEMENT PURPOSES IN ACCORDANCE**  
25 **WITH THE LAW GOVERNING THE RELEASE OF POLICE RECORDS AND WITH**  
26 **PROCEDURES ESTABLISHED BY THE DEPARTMENT.**

27           **(J) THE DEPARTMENT KNOWINGLY MAY NOT INCLUDE IN ANY**  
28 **CRIMINAL INTELLIGENCE FILE INFORMATION THAT HAS BEEN OBTAINED IN**  
29 **VIOLATION OF THIS SECTION.**

30           **(K) NOTHING IN THIS SECTION MAY BE CONSTRUED TO PROHIBIT A**  
31 **DEPARTMENT EMPLOYEE, IN THE COURSE OF THE EMPLOYEE'S DUTIES, FROM**  
32 **VISITING ANY PLACE, OR ATTENDING ANY EVENT, THAT IS OPEN TO THE**  
33 **GENERAL PUBLIC, OR REVIEWING INFORMATION THAT IS IN THE PUBLIC**  
34 **DOMAIN, ON THE SAME TERMS AND CONDITIONS AS MEMBERS OF THE PUBLIC,**  
35 **IF THE DEPARTMENT EMPLOYEE HAS A LEGITIMATE LAW ENFORCEMENT**  
36 **OBJECTIVE.**

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2009.