



HOUSE BILL No. 5571

May 19 1994 Introduced by Reps Galloway Hammerstrom Pitoniak Profit Gustafson Anthony Vorva Rhead Brackenridge Hill LeTarte Weeks DeLange Olshove Griffin Bullard Jersevic Whyman McNutt McManus Fitzgerald McBryde Gnodtke Gire Price Dalman Kukuk Porreca Schroer Curtis Willard DeMars Parks Agee Byrum Jamian Crissman Shugars Voorhees Middleton Walberg Horton Nye Dobb Dolan Llewellyn Cropsey Johnson and Kaza and referred to the Committee on Consumers

A bill to regulate certain solicitation of contributions to provide for registration and disclosure statements to prescribe the powers and duties of certain state agencies and officials to prohibit certain activities to prescribe remedies and penalties and to repeal certain acts and parts of acts

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Sec 1 This act shall be known and may be cited as the
2 solicitation of contributions act

3 Sec 2 As used in this act

4 (a) Contribution means the promise grant or payment of
5 money or property of any kind or value, including promises to pay
6 made to an organization or professional fund-raiser

7 Contribution does not include money or property received from a
8 governmental entity or a foundation restricted as to use

9 Contribution does not include funds collected by an organization

1 exclusively from the members of the organization or payments
2 clearly stated as not being and are not deductible as a charita-
3 ble contribution for federal income tax purposes by members of an
4 organization for bona fide membership fees, dues, fines, assess-
5 ments, or for services rendered to individual members, if member-
6 ship in the organization confers a right, or other direct bene-
7 fit, other than only membership status

8 (b) 'Person' means an individual, organization, group, asso-
9 ciation partnership corporation trust, professional
10 fund-raiser or any combination of those entities

11 (c) Professional fund-raiser means a person who for com-
12 pensation or other consideration plans conducts, manages, or
13 carries on, either directly or through paid individual solici-
14 tors, a drive or campaign of soliciting contributions for or on
15 behalf of an organization or person An officer or employee of
16 an organization is not a professional fund-raiser unless his or
17 her compensation or salary is based in whole or in part on the
18 amount of funds raised through solicitations

19 (d) Except for an organization that was created for the pur-
20 pose of electing a candidate to public office and has complied
21 with the requirements of the Michigan campaign finance act Act
22 No 388 of the Public Acts of 1976, being sections 169 201 to
23 169 282 of the Michigan Compiled Laws, "organization means any
24 individual, group, organization, association, partnership corpo-
25 ration, or union, organized, primarily or in part for the pur-
26 pose of soliciting contributions

1 Sec 3 (1) Except as provided in section 4 a person shall
2 not solicit contributions within this state, or receive funds
3 solicited within this state on its behalf unless the person is
4 an organization and has first registered with the attorney
5 general An organization shall register in writing on a form
6 prescribed by the attorney general The registration form shall
7 contain all of the following

8 (a) The name of the organization and the name or names under
9 which it will solicit or receive contributions

10 (b) The principal address of the organization and the
11 address of all other offices of the organization in this state
12 If the organization does not maintain a principal office in this
13 state, the registration form shall contain the name and address
14 of the person having custody of its financial records

15 (c) The location and date when the organization was legally
16 established, the form of its organization, and a reference to any
17 determination of its tax exempt status under the federal internal
18 revenue code

19 (d) The names and business addresses of the officers, direc-
20 tors, trustees, the principal executive officer and if applica-
21 ble the resident agent

22 (e) The specific areas for which the contributions to be
23 solicited or received will be used The areas of expenditure
24 shall be broken down into 1 or more of the following categories

25 (1) Administrative

26 (2) Political purposes and campaign contributions

1 (iii) Membership services
2 (iv) Charitable contributions
3 (v) Education and training
4 (f) If the organization is existing on the effective date of
5 this act or files a renewal registration pursuant to
6 subsection (6) it shall include a financial statement for the
7 preceding fiscal year that provides the percentage range as
8 required by subsection (2) of the total distributions by the cat-
9 egories as required by subdivision (e)
10 (g) The fiscal year of the organization
11 (h) A copy of any written consent required under section
12 9(3)
13 (2) The category distributions of an organization shall be
14 reported by 1 of the following percentage ranges
15 (a) 0-10~~✓~~
16 (b) 11-25~~✓~~
17 (c) 26-50~~✓~~
18 (d) 51-75~~✓~~
19 (e) 76-100~~✓~~
20 (3) The registration form shall be accompanied by a regis-
21 tration fee of \$25 00 The revenue collected under this subsec-
22 tion shall be deposited in the state treasury and credited to the
23 general fund
24 (4) The registration shall be effective immediately upon
25 receipt by the attorney general of the completed registration
26 form and the registration fee

1 (5) A registration filed under this section shall expire 6
2 months after the closing date of the organization s fiscal year

3 (6) A registration filed under this section may be renewed
4 for an additional 1-year period by filing a renewal registration
5 in the form prescribed by the attorney general and payment of a
6 renewal fee of \$25 00 before the expiration of the existing
7 registration The information required in the renewal form shall
8 not exceed the information required by this section

9 Sec 4 (1) A professional fund-raiser shall not solicit
10 contributions within this state on behalf of an organization or
11 person without first registering with the attorney general The
12 registration shall be in writing on a form prescribed by the
13 attorney general and contain the same information as required
14 under section 3(1)(a) to (d)

15 (2) The registration form shall include the legal name and
16 address of each individual who will for compensation be making or
17 supervising the making of solicitation for contributions

18 (3) The registration shall be accompanied by a surety bond
19 The bond shall be in a form satisfactory to the attorney
20 general The professional fund-raiser is the obligor on the
21 surety bond of which the surety company is the surety The com-
22 pany shall be qualified in this state to write bonds required by
23 this act The surety bond shall run to the attorney general for
24 the benefit of the people of the state of Michigan for the use
25 of, and may be sued on by, the state or any person who may have a
26 cause of action under this act against the obligor of the bond

1 under this act The surety bond shall require the obligor to
2 faithfully conform to and abide by the provisions of this act

3 (4) For a professional fund-raiser existing on the effective
4 date of this act the principal sum of the initial surety bond and
5 for a professional fund-raiser not existing on the effective date
6 of this act the principal sum of the surety bond for the first
7 year shall be in the amount of \$25 000 00

8 (5) The registration form shall be accompanied by a regis-
9 tration fee of \$200 00 The revenue collected under this subsec-
10 tion shall be deposited in the state treasury and credited to the
11 general fund

12 (6) The registration shall be effective immediately upon
13 receipt by the attorney general of the completed registration
14 form, surety bond and registration fee

15 (7) The registration filed under this section shall expire 6
16 months after the closing date of the public fund-raiser s fiscal
17 year

18 (8) A registration filed under this section may be renewed
19 for an additional 1-year period by filing a renewal registration
20 in the form prescribed by the attorney general a renewal surety
21 bond, and payment of a renewal fee of \$200 00 before the expira-
22 tion of the existing registration The information required in
23 the renewal form shall not exceed the information required in the
24 initial registration form The principal sum of the surety bond
25 for a renewed registration shall be in the following amount based
26 on the total contributions the professional fund-raiser collected
27 during the preceding fiscal year

1 (a) Contributions of \$100 000 00 or less - \$25 000 00

2 (b) Contributions between \$100,000 00 and \$200,000 00 -
3 \$50,000 00

4 (c) Contributions between \$200,000 00 and \$300,000 00 -
5 \$75,000 00

6 (d) Contributions in excess of \$300,000 00 - \$100,000 00

7 (9) A professional fund-raiser shall maintain a list of the
8 address and legal name of each individual who has made a solici-
9 tation within 1 year, is currently soliciting, or will be making
10 solicitations on behalf of the professional fund-raiser

11 Sec 5 An organization or professional fund-raiser shall
12 notify the attorney general within 15 days of any change in the
13 information required to be furnished for registration under this
14 act

15 Sec 6 (1) Except as provided in subsection (2) registra-
16 tion forms and documents required to be filed with the attorney
17 general under this act shall be open to public inspection as pro-
18 vided by the freedom of information act, Act No 442 of the
19 Public Acts of 1976, being sections 15 231 to 15 246 of the
20 Michigan Compiled Laws

21 (2) The addresses required to be provided under section 4(2)
22 and 4(9) and as otherwise provided in section 17(6) shall be
23 exempt from the provisions of Act No 442 of the Public Acts of
24 1976

25 Sec 7 The attorney general shall not accept a registra-
26 tion under this act from an organization or professional
27 fund-raiser located in another state or country without the

1 organization or professional fund-raiser first designating a
2 resident agent in this state for the acceptance of service of
3 process

4 Sec 8 (1) An organization or professional fund-raiser
5 which does not maintain an office within this state shall be
6 subject to service of process by service upon its resident agent
7 or, if there is no resident agent by service upon the person who
8 has custody of the financial records as designated on the regis-
9 tration form

10 (2) If service cannot be made as provided in subsection (1),
11 then service may be made as provided by law or court rule

12 (3) After service is effected by either subsection (1) or
13 (2), a copy of the process shall be mailed to the last known
14 address of the organization or professional fund-raiser

15 Sec 9 (1) Except as provided by subsection (2) an organ-
16 ization or professional fund-raiser shall not use for the purpose
17 of soliciting contributions a name symbol or statement so
18 closely related or similar to that used by another organization
19 that it would tend to confuse or mislead the public

20 (2) Subsection (1) does not apply to an organization or pro-
21 fessional fund-raiser with a name symbol or statement existing
22 on the effective date of this act

23 (3) An organization or professional fund-raiser shall not
24 use for the purpose of soliciting contributions the name of
25 another person not affiliated with the organization without first
26 obtaining the written consent of the person

1 (4) A person whose name, symbol, or statement is used in
2 violation of this section may bring an action in the circuit
3 court of the county in which the violation occurs for \$25 000 00
4 or actual damages, whichever is greater plus reasonable attorney
5 fees

6 Sec 10 An organization or professional fund-raiser shall
7 not divert solicited funds to a purpose or purposes other than
8 that for which the funds were contributed or solicited

9 Sec 11 (1) An organization or professional fund-raiser
10 shall not, in connection with the solicitation or reception of
11 contributions for or on behalf of an organization or person, mis-
12 represent to mislead make false statements to, or use a name
13 other than the solicitor s legal name to another person by any
14 manner that would lead a reasonable person to believe any of the
15 following

16 (a) That contributions are tax deductible unless they so
17 qualify under the internal revenue code

18 (b) That the person is under an obligation to make a
19 contribution

20 (c) That failure to make a contribution will adversely
21 affect the person s credit rating

22 (d) That the solicitor is located in a geographic area that
23 is different than the geographic area in which the solicitor is
24 actually located

25 (e) That the solicitor has a sponsorship, approval status,
26 affiliation, or connection with an organization or purpose which
27 the solicitor does not actually have

1 (f) That the person has previously approved or agreed to
2 make a contribution, when in fact the person has not given such
3 approval or agreement

4 (g) That the contributions are for a purpose that is differ-
5 ent than the actual purpose for which the contributions will be
6 used

7 (2) An organization or professional fund-raiser shall not
8 knowingly take advantage of the inability of the person being
9 solicited to reasonably protect his or her interests by reason of
10 disability, illiteracy, or inability to understand the terms and
11 conditions of an agreement to contribute

12 (3) An organization or professional fund-raiser shall make a
13 voice recording of all telephone communications that solicit con-
14 tributions and shall make the recording available to the attorney
15 general upon a request as a result of an investigation or
16 complaint Each solicitor shall be notified that a recording is
17 being made of all telephone communications Unless notified by
18 the attorney general that the recordings are part of an investi-
19 gation or complaint, the recording shall be kept for 60 days by
20 the organization or professional fund-raiser

21 Sec 12 (1) Each organization or professional fund-raiser
22 shall prepare a disclosure statement to be given with all printed
23 material and read when contact is made by telephone to each
24 person from whom a contribution is solicited The disclosure
25 statement shall contain all of the following information

26 (a) The name and purpose of the organization

1 (b) Whether the solicitor is a separate organization acting
2 on behalf of another organization

3 (c) The specific purpose or purposes including any politi-
4 cal purposes and campaign contributions, for which the contribu-
5 tions are to be used

6 (d) That the categories and percentages of distributions of
7 contributions are available upon request as provided in
8 subsection (2)

9 (2) Upon written or verbal request of the individual being
10 solicited, the solicitor shall provide the percentage ranges for
11 each category as described in section 3

12 Sec 13 Each organization or professional fund-raiser
13 shall print the following information conspicuously on all
14 invoices, pledge cards or other written requests for payment

15 (a) The name and purpose of the organization

16 (b) Whether the solicitor is a separate organization acting
17 on behalf of another organization

18 (c) The specific purpose or purposes for which the contribu-
19 tions are to be used

20 (d) That the solicitor is registered with the attorney gen-
21 eral and that information concerning the solicitor may be
22 obtained by calling the toll-free telephone number established
23 pursuant to section 14 The solicitor shall provide the person
24 being solicited the toll-free telephone number

25 Sec 14 The attorney general shall establish a toll-free
26 telephone number which may be called to obtain information

1 concerning or to file a complaint against a solicitor of
2 contributions under this act

3 Sec 15 (1) If the attorney general has probable cause to
4 believe that a person has engaged, is engaging, or is about to
5 engage in a method, act, or practice which is unlawful pursuant
6 to this act, and upon notice given in accordance with this sec-
7 tion, the attorney general may bring an action in accordance with
8 principles of equity to restrain the person by temporary or per-
9 manent injunction from engaging in the method, act, or practice
10 The action may be brought in the circuit court of the county
11 where the person is established or solicits contributions or, if
12 the person is not established in this state, in the circuit court
13 of Ingham county The court may award costs to the prevailing
14 party For persistent and knowing violation of this act the
15 court may assess the person a civil penalty of not more than
16 \$5,000 00

17 (2) Unless waived by the court on good cause shown not less
18 than 10 days before the commencement of an action under this sec-
19 tion the attorney general shall notify the person of his or her
20 intended action and give the person an opportunity to cease and
21 desist from the alleged unlawful method act or practice or to
22 confer with the attorney general in person, by counsel, or by
23 other representative as to the proposed action before the pro-
24 posed filing date The notice may be given the person by mail,
25 postage prepaid to his or her usual place of business or, if the
26 person does not have a usual place of business, to his or her
27 last known address or to the resident agent

1 (3) A prosecuting attorney or law enforcement officer
2 receiving notice of an alleged violation of this act or of a
3 violation of an injunction, order decree or judgment issued in
4 an action brought pursuant to this act, or of an assurance under
5 section 16, shall immediately forward written notice of the vio-
6 lation together with any information he or she may have to the
7 attorney general

8 (4) In addition to any other penalties provided by this act,
9 a person who knowingly violates the terms of an injunction,
10 order, decree, or judgment issued pursuant to this section shall
11 forfeit and pay to the state a civil penalty of not more than
12 \$500 00 for each violation For the purposes of this section,
13 the court issuing an injunction order, decree or judgment shall
14 retain jurisdiction the cause shall be continued and the attor-
15 ney general may petition for recovery of a civil penalty as pro-
16 vided by this act

17 Sec 16 (1) If the attorney general has authority to
18 institute an action or proceeding pursuant to section 15 he or
19 she may accept an assurance of discontinuance of a method, act,
20 or practice which is alleged to be unlawful under this act from
21 the person who is alleged to have engaged, is engaging or is
22 about to engage in the method act or practice Except as pro-
23 vided in subsection (2), the assurance shall not constitute an
24 admission of guilt nor be introduced in any other proceeding
25 The assurance may include a stipulation for 1 or more of the
26 following

1 (a) The voluntary payment by the person for the costs of
2 investigation

3 (b) An amount to be held in escrow pending the outcome of an
4 action

5 (c) An amount for restitution to an aggrieved person

6 (2) An assurance of discontinuance shall be in writing and
7 filed with the court The clerk of the court shall maintain a
8 record of the filings Unless rescinded by the parties or voided
9 by a court for good cause, the assurance may be enforced in the
10 court by the parties to the assurance The assurance may be mod-
11 ified by the parties or by the court for good cause

12 Sec 17 (1) Upon the ex parte application of the attorney
13 general to the circuit court in the county where the person is
14 established or solicits contributions or if the person is not
15 established in this state in Ingham county, the circuit court
16 upon finding probable cause to believe a person has engaged, is
17 engaging, or is about to engage in a method act or practice
18 which is unlawful under this act may issue the subpoena compel-
19 ling a person to appear before the attorney general and under
20 oath answer questions relating to the alleged violation of this
21 act A person served with a subpoena may be accompanied by coun-
22 sel when he or she appears before the attorney general The sub-
23 poena may compel a person to produce the books, records papers
24 documents, or things relating to the alleged violation of this
25 act During the examination of documentary material under the
26 subpoena, the court may require a person having knowledge of the
27 documentary material or the matters contained in the documentary

1 material to attend and give testimony under oath or
2 acknowledgment with respect to the documentary material

3 (2) The subpoena shall include the notice of the time,
4 place, and cause of the taking of testimony, examination or
5 attendance and shall allow not less than 10 days before the date
6 of the taking of testimony examination, or attendance, unless
7 for good cause shown the court shortens the period of time

8 (3) Service of the notice shall be in the manner provided
9 and subject to the provisions that apply to service of process
10 upon a defendant in a civil action commenced in the circuit
11 court

12 (4) The notice shall include all of the following

13 (a) A statement of the time and place for the taking of tes-
14 timony or the examination and the name and address of the person
15 to be examined If the name is not known, the notice shall give
16 a general description sufficient to identify the person or the
17 particular class or group to which the person belongs

18 (b) A reference to this section and the general subject
19 matter under investigation

20 (c) A description of the documentary material to be produced
21 with reasonable specificity so as to indicate fairly the material
22 demanded

23 (d) A return date within which the documentary material
24 shall be produced

25 (e) Identification of the members of the attorney general s
26 staff to whom the documentary material shall be made available
27 for inspection and copying

1 (5) At any time before the date specified in the notice
2 upon motion for good cause shown, the court may extend the
3 reporting date or modify or set aside the notice and subpoena

4 (6) The documentary material or other information obtained
5 by the attorney general pursuant to an investigation under this
6 section shall be confidential records of the office of the attor-
7 ney general and shall not be available for public inspection or
8 copying or divulged to any person except as provided in this
9 section The attorney general may disclose documentary material
10 or other information as follows

11 (a) To other law enforcement officials

12 (b) In connection with an enforcement action brought pursu-
13 ant to this act

14 (c) Upon order of the court, to a party in a private action
15 brought pursuant to this act

16 Sec 18 (1) A person upon whom a notice is served pursuant
17 to section 17 shall comply with the terms of the notice unless
18 otherwise provided by order of the court

19 (2) A person who does any of the following shall be assessed
20 a civil penalty of not more than \$5 000 00

21 (a) Knowingly without good cause fails to appear when served
22 with a notice

23 (b) Knowingly avoids, evades, or prevents compliance in
24 whole or in part, with an investigation, including the removal
25 from any place, concealment, destruction, mutilation alteration,
26 or falsification of documentary material in the possession,
27 custody, or control of a person subject to the notice

1 (c) Knowingly conceals relevant information

2 (3) The attorney general may file a petition in the circuit
3 court of the county in which the person is established or solic-
4 its contributions or, if the person is not established in this
5 state, in the circuit court of Ingham county for an order to
6 enforce compliance with a subpoena or this section A violation
7 of a final order entered pursuant to this section may be punished
8 as civil contempt

9 (4) Upon the petition of the attorney general the circuit
10 court may enjoin a person from soliciting contributions in this
11 state if the person persistently and knowingly evades or prevents
12 compliance with an injunction issued pursuant to this act

13 Sec 19 (1) The attorney general may bring a class action
14 on behalf of persons residing in or injured in this state for the
15 actual damages caused by any method act, or practice that is
16 unlawful under this act

17 (2) The court after a hearing may appoint a receiver or
18 order sequestration of the defendant's assets if it appears to
19 the satisfaction of the court that the defendant threatens or is
20 about to remove conceal, or dispose of his or her assets to the
21 detriment of members of the class

22 (3) If at any stage of the proceedings the court requires
23 that notice be sent to the class, the attorney general may peti-
24 tion the court to require the defendant to bear the cost of the
25 notice In determining whether to impose the cost on the
26 defendant or the state the court shall consider the probability

1 that the attorney general will succeed on the merits of the
2 action

3 (4) If the defendant shows by a preponderance of the evi-
4 dence that a violation of this act resulted from a bona fide
5 error notwithstanding the maintenance of procedures reasonably
6 adapted to avoid the error the amount of recovery shall be
7 limited to actual damages and attorneys fees

8 (5) An action shall not be brought by the attorney general
9 under this section more than 6 years after the occurrence of the
10 method, act or practice which is the subject of the action

11 Sec 20 (1) Whether or not he or she seeks damages or has
12 an adequate remedy at law, a person may bring an action to do
13 either or both of the following

14 (a) Obtain a declaratory judgment that a method act, or
15 practice is unlawful under this act

16 (b) Enjoin in accordance with the principles of equity a
17 person who is engaging or is about to engage in a method act, or
18 practice which is unlawful under this act

19 (2) Except in a class action, a person who suffers loss as a
20 result of a violation of this act may bring an action to recover
21 actual damages or \$250 00, whichever is greater, together with
22 reasonable attorneys' fees

23 (3) A person who suffers loss as a result of a violation of
24 this act may bring a class action on behalf of persons residing
25 or injured in this state for the actual damages caused by any
26 method, act or practice that is unlawful under this act

1 (4) The court after a hearing may appoint a receiver or
2 order sequestration of the defendant's assets if it appears to
3 the satisfaction of the court that the defendant threatens or is
4 about to remove, conceal or dispose of his or her assets to the
5 detriment of members of the class

6 (5) If at any stage of proceedings brought under subsection
7 (3) the court requires that notice be sent to the class a person
8 may petition the court to require the defendant to bear the cost
9 of notice In determining whether to impose the cost on the
10 defendant or the plaintiff, the court shall consider the proba-
11 bility that the person will succeed on the merits of his or her
12 action

13 (6) If the defendant shows by a preponderance of the evi-
14 dence that a violation of this act resulted from a bona fide
15 error notwithstanding the maintenance of procedures reasonably
16 adapted to avoid the error the amount of recovery shall be
17 limited to actual damages

18 (7) An action under this section shall not be brought more
19 than 6 years after the occurrence of the method, act or practice
20 which is the subject of the action When a person commences an
21 action against another person, the defendant may assert as a
22 defense or counterclaim any claim under this act arising out of
23 the transaction on which the action is brought

24 Sec 21 (1) Upon commencement of an action brought pursu-
25 ant to section 20 or section 24, the clerk of the court shall
26 mail a copy of the complaint to the attorney general and upon
27 entry of a judgment or decree in the action, the clerk of the

1 court shall mail a copy of the judgment, decree, or order to the
2 attorney general

3 (2) In a subsequent action by the attorney general brought
4 pursuant to section 19 proof of a violation of a permanent
5 injunction issued pursuant to section 15 is conclusive evidence
6 that the defendant engaged in a method act, or practice which is
7 unlawful under this act

8 Sec 22 If the attorney general or prosecuting attorney
9 commences an action or files a voluntary assurance pursuant to
10 this act, filing fees shall not be required to be paid

11 Sec 23 A law enforcement officer in the state if
12 requested by the attorney general or a prosecuting attorney
13 shall aid and assist in an investigation of an alleged or actual
14 violation of this act

15 Sec 24 A prosecuting attorney may conduct an investiga-
16 tion pursuant to this act and may institute and prosecute an
17 action under this act in the same manner as the attorney
18 general

19 Sec 25 This act does not limit or restrict the exercise
20 of powers or the performance of the duties of the attorney gen-
21 eral or local prosecutors which they are otherwise authorized to
22 exercise or perform under any other provisions of law including
23 seeking injunctive relief to stop prohibited activity

24 Sec 26 This act does not apply to a person regulated pur-
25 suant to the public safety solicitation act Act No 298 of the
26 Public Acts of 1992 being sections 14 301 to 14 327 of the
27 Michigan Compiled Laws

1 Sec 27 Act No 169 of the Public Acts of 1975 being
2 sections 400 271 to 400 294 of the Michigan Compiled Laws is
3 repealed