



**House
Legislative
Analysis
Section**

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REGULATE LAW ENFORCEMENT SOLICITATION

House Bill 4132 as passed by the House
Second Analysis (10-11-90)

Sponsor Rep Curtis Hertel
Committee Consumers

THE APPARENT PROBLEM:

When contacted by a company that solicits contributions for police organizations most people take it for granted that the person on the other end of the telephone is a police officer. In most instances, however, the caller is an employee (usually a college student working part-time) of the company and the company is part of a growing industry whose high-pressure sales tactics have lately attracted media attention. The callers, however, not only make no attempt to correct the erroneous assumption that they are police officers, but also attempt to present themselves as representatives of local police agencies when in fact they are soliciting funds for an organization in another part of the state. In addition, many businesspeople in cities around the state complain of being harassed or intimidated by sales pitches that reportedly hint that failure to support an organization will affect the law enforcement and fire protection services received. Of major concern is the fact that only a small percentage of money received in contributions goes to the organization concerned. While Better Business Bureaus in some areas have distributed pamphlets on how to handle high pressure sales tactics from these companies, and some police organizations publicly warn businesses and residents not to get involved with law enforcement telephone solicitation, others — including some police organizations — support legislation that would regulate them.

THE CONTENT OF THE BILL:

The bill would create the Law Enforcement Solicitation Act to regulate contribution solicitations by persons affiliated with or organized for the benefit of public safety organizations. The bill would differentiate between a "public safety organization" that represented law enforcement officers, fire fighters, and corrections officers, and a "professional fund-raiser," who would be defined under the bill as a person who, for compensation, solicited contributions for or on behalf of a public safety organization or person. An officer or employee of a public safety organization would not be considered a "professional fund-raiser" unless his or her compensation was based in whole or in part on the amount of funds raised through solicitations. Under the bill, an individual who made a person-to-person solicitation would have to be a member of the organization on whose behalf a contribution was sought. The individual, however, could not wear a public safety uniform (or clothing similar to it) and could not collect or receive a person-to-person contribution.

Registration Requirements Under the bill, each organization and professional fund-raiser that solicited contributions from the public for the benefit of law enforcement officers would first be required to apply to the attorney general for registration. Annual registration fees would be \$25 for a public safety organization and \$200 for a professional fund-raiser. In addition, a professional fund-raiser would be required to submit a \$100,000 surety bond, and to maintain a list of the address and legal name of

each individual making solicitations. With the exception of the addresses of the individuals involved in a professional fund-raiser, the contents of registration forms filed with the attorney general would be open to public inspection, as provided by the Freedom of Information Act.

Registration applications would include information on the form of the organization, a reference to any determination of tax exempt status under the Internal Revenue Code and, for public safety organizations, the specific purpose for which the solicited contributions would be used, and a breakdown of how they would be spent. In addition, existing organizations would be required to furnish a financial statement for the preceding fiscal year that provided the percentage of the total distributions, and — when the organization used the name of another person not affiliated with the organization — a copy of that person's written consent. The distributions would have to be reported by certain categories (including administrative, political, membership, charitable, and education purposes), and in one of the following ranges: 0-10, 11-25, 26-50, 51-75, or 76-100 percent. In addition, a solicitor would be required to provide the percentage ranges in the above categories upon written or verbal request.

Out-of-State Registrants Registration applications would not be accepted from organizations or professional fund-raisers located in another state or country unless the sponsor first designated a resident agent in Michigan for the acceptance of service of process. Those without an office in the state would be subject to service of process by service upon its resident agent or, if there were no resident agent, by service upon the person who had custody of the financial records.

Exemptions An organization that collected funds to aid the spouse and children of a public safety officer who died or was injured in the line of duty would be exempt from the requirements of the bill, provided that not less than 75 percent of the contributions went for the stated purpose, the organization's membership had officers from the same employer as the slain or injured officer, the solicitations were only conducted within the jurisdiction of that employer, and the organization had received written approval, on a form approved by the attorney general, from the person or persons on whose behalf the contributions were sought.

Requirements for soliciting contributions The bill would require the following when contributions were solicited:

- a) That a disclosure statement — containing the name and purpose of the organization, whether the solicitor is a separate organization acting on behalf of a public safety organization, and the specific purpose for which the contributions are to be used — be given with all printed material and read when contacted by telephone to each person from whom a contribution is solicited. This information would also be required on all invoices,

H.B. 4132 (10-11-90)

and, in addition, the toll-free telephone number that the attorney general would be required to establish and which could be used to obtain information on, or to file a complaint against, a solicitor of contributions.

- b) That an individual who makes a person-to-person solicitation for contributions to an organization be a member of that organization, and that the person called be informed of whether the solicitor is a sworn public safety officer or a member of the organization soliciting the funds.
- c) That the individual not wear a public safety uniform or clothing similar to a public safety uniform.
- d) That an organization or professional fund-raiser make a voice recording of all telephone communications that solicited contributions.

The following would be prohibited under the bill:

- a) Using a name, symbol, or statement that was closely related or similar to that used by another organization. (This provision would not apply to an organization in existence on the effective date of the bill).
- b) Using the name of another person not affiliated with that organization without first obtaining the person's written consent.
- c) Diverting solicited funds to a purpose or purposes other than for which they were given.
- d) Knowingly taking advantage of the inability of the person being solicited to reasonably protect his or her interests by reason of disability, illiteracy, or inability to understand the terms and conditions of an agreement to contribute.
- e) Misrepresenting, misleading, making false statements, or using a name other than a solicitor's legal name in a manner that would lead a reasonable person to believe any of the following:
 - 1) That special benefits or treatment from a public safety organization would be given, or that failure to make a contribution would result in unfavorable treatment.
 - 2) That contributions are tax deductible unless they so qualify under the Internal Revenue Code.
 - 3) That the person is under an obligation to make a contribution.
 - 4) That failure to make a contribution will adversely affect the person's credit rating.
 - 5) That the solicitor is located in a geographic area that is different from the geographic area in which the solicitor is actually located.
 - 6) That the solicitor has a sponsorship, approval, status, affiliation, or connection with an organization or purpose which the solicitor does not actually have.
 - 7) That the person has previously approved or agreed to make a contribution, when in fact the person has not given such approval or agreement.
 - 8) That the contributions are for a purpose that is different from the actual purpose for which they would be used.

Penalties. Under the bill, a prosecuting attorney or law enforcement officer who received notice of an alleged violation of the act would be required to notify the attorney

general. The following actions could be brought by the attorney general against those whom the attorney general had reasonable cause to believe had violated the act:

- A civil suit could be filed in the circuit court of the county where the defendant was established or solicited contributions, and the defendant could be assessed a civil penalty of up to \$5,000.
- Violation of the terms of an injunction, order, decree, or judgment would incur a civil penalty of up to \$500 for each violation.
- The attorney general could accept an assurance of discontinuance of an action that was alleged to be unlawful under the act. The assurance would be filed in Ingham County Circuit Court, and could include a stipulation that the person pay the investigation costs, an amount that would be held in escrow pending the outcome of the action, and/or an amount for restitution to the aggrieved party.
- For out-of-state defendants, the attorney general could issue an ex parte application in the circuit court where the person was established or in Ingham County Circuit Court, and, after the ex parte hearing, issue a subpoena to compel the person to appear and answer questions relating to the alleged violation under oath. Notice would be served on those required to produce or to give testimony on documentary evidence in the same manner that service of process is required for a civil action in the circuit court. The documentary evidence would be considered the confidential records of the attorney general; the evidence could be disclosed to law enforcement officials, or to a party in a private action, but would not be available for public inspection.
- A civil penalty of up to \$5,000 could be served on a person who failed to appear when served notice, who evaded compliance with an investigation, or who knowingly concealed relevant information. A petition could also be filed by the attorney general to enforce compliance with a subpoena; the circuit court could enjoin a person from soliciting contributions in the state. Violation of the order would be punishable as civil contempt.
- A permanent injunction would be considered conclusive evidence that the defendant had engaged in a violation of the act, and could be used in a class action subsequently brought by the attorney general.

Class Actions. The attorney general could bring a class action on behalf of persons residing or injured in the state for actual damages caused by a practice that was in violation of the act, and the court could appoint a receiver or order sequestration of a defendant's assets if it appeared that they would be removed, concealed, or disposed of. If the court required that notice be sent to the class, the attorney general could petition the court to require the defendant to bear the cost of the notice. Should the defendant prove that the violation of the act resulted from a bona fide error, the amount of recovery would be limited to actual damages. The statute of limitations for an action brought by the attorney general under the act would be six years.

Other Actions. An action could be brought under the act — whether or not damages were sought — to obtain a declaratory judgment, or to enjoin a person from a practice that was in violation of the act. The court would be required to mail a copy of the complaint, and of a judgment, decree, or order, to the attorney general. An action could be brought under the act to recover actual damages or \$250, whichever was greater, together with reasonable attorneys'

fees, a class action could be brought for actual damages, with court costs assessed on the defendant. The court could appoint a receiver or order sequestration of a defendant's assets if it appeared that the defendant would remove them. Should the defendant prove that the violation of the act resulted from a bona fide error, the amount of recovery would be limited to actual damages. The statute of limitations for an action brought by the attorney general under the act would be six years.

Other Provisions Under the bill, a prosecuting attorney could conduct an investigation and institute and prosecute an action in the same manner as the attorney general. Filing fees would not be required in actions initiated by the attorney general or by the prosecuting attorney.

If requested to do so by the attorney general or a prosecuting attorney, a law enforcement officer in the state would be required to aid and assist in an investigation of a violation of the act.

The act would not restrict other remedies the attorney general and local prosecutors had resource to under other provisions of law, including seeking injunctive relief to stop prohibited activity.

FISCAL IMPLICATIONS:

According to the attorney general's office, additional staff will be required to carry out the registration provisions of the bill. Since no funds were appropriated under the bill to finance this requirement, the costs involved would be covered by revenue from registration fees. (10-5-90)

ARGUMENTS:

For:

According to complaints received from citizens, professional fundraisers often prey on those who can least afford to alienate the police, such as senior citizens on fixed incomes, by insinuating that police protection will be withheld if a contribution isn't given. Reportedly, senior citizens who are out of the state in the winter receive hints that police surveillance of their homes will depend on their contributions. Other unethical practices that have been reported involve the misuse of funds that have been collected for the families of slain police officers. By requiring the registration of law enforcement telephone solicitors or "professional fund raisers," the bill would give the attorney general's office a means of tracking down those who use unethical means to solicit contributions.

Against:

Under the bill, an individual who made a person-to-person solicitation would have to be a member of the organization on whose behalf a contribution was sought. The individual, however, could not collect a person-to-person contribution. Since only one police organization in the state practices this type of solicitation for funds, the bill would seem to attempt to put this organization out of business, and should therefore be amended to require, instead, that individuals could solicit and collect contributions or pledges person-to-person, or door-to-door, but could not accept cash contributions.

POSITIONS:

The Deputy Sheriff's Association of Michigan supports the bill. (10-8-90)

The Police Officers Association of Michigan (P.O.A.M.) supports the bill. (10-8-90)

The Michigan State Police Troopers Association supports the bill. (10-11-90)

The Michigan Association of Chiefs of Police supports the concept of the bill. (10-8-90)

The Michigan Sheriffs Association would support the bill if it were amended to prohibit the door-to-door collection of only cash contributions, and not all person-to-person contributions. (10-11-90)

The Prosecuting Attorneys Association of Michigan has no position on the bill. (10-8-90)