

Introduced by Senator Harman

February 27, 2009

An act to amend Section 12599 of the Government Code, relating to charitable fundraising.

LEGISLATIVE COUNSEL'S DIGEST

SB 616, as introduced, Harman. Charitable fundraising: commercial fundraiser for charitable purposes.

Existing law defines a "commercial fundraiser for charitable purposes" as any individual, corporation, unincorporated association, or any other legal entity who for compensation solicits funds, assets, or property for charitable purpose in this state, or who, as a result of a solicitation of funds, assets, or property in this state, receives or controls the funds, assets, or property solicited for charitable purposes, or who employs, procures, or engages any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes, and sets forth various requirements and restrictions relating to commercial fundraisers for charitable purposes.

This bill would make a technical, nonsubstantive change to this provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12599 of the Government Code is
- 2 amended to read:

1 12599. (a) “Commercial fundraiser for charitable purposes”
2 means any individual, corporation, unincorporated association, or
3 other legal entity who for compensation does any of the following:

4 (1) Solicits funds, assets, or property in this state for charitable
5 purposes.

6 (2) As a result of a solicitation of funds, assets, or property in
7 this state for charitable purposes, receives or controls the funds,
8 assets, or property solicited for charitable purposes.

9 (3) Employs, procures, or engages any compensated person to
10 solicit, receive, or control funds, assets, or property for charitable
11 purposes.

12 A commercial fundraiser for charitable purposes shall include
13 any person, association of persons, corporation, or other entity that
14 obtains a majority of its inventory for sale by the purchase, receipt,
15 or control for resale to the general public, of salvageable personal
16 property solicited by an organization qualified to solicit donations
17 pursuant to Section 148.3 of the Welfare and Institutions Code.

18 A commercial fundraiser for charitable purposes shall not include
19 a “trustee” as defined in Section 12582 or 12583, a “charitable
20 corporation” as defined in Section 12582.1, or any employee
21 thereof. A commercial fundraiser for charitable purposes shall not
22 include an individual who is employed by or under the control of
23 a commercial fundraiser for charitable purposes registered with
24 the Attorney General. A commercial fundraiser for charitable
25 purposes shall not include any federally insured financial institution
26 that holds as a depository funds received as a result of a solicitation
27 for charitable purposes.

28 As used in this section, “charitable purposes” includes any
29 solicitation in which the name of any organization of law
30 enforcement personnel, firefighters, or other persons who protect
31 the public safety is used or referred to as an inducement for
32 transferring any funds, assets, or property, unless the only
33 expressed or implied purpose of the solicitation is for the sole
34 benefit of the actual active membership of the organization.

35 (b) A commercial fundraiser for charitable purposes shall, prior
36 to soliciting any funds, assets, or property, including salvageable
37 personal property, in California for charitable purposes, or prior
38 to receiving and controlling any funds, assets, or property,
39 including salvageable personal property, as a result of a solicitation
40 in this state for charitable purposes, register with the Attorney

General's Registry of Charitable Trusts on a registration form provided by the Attorney General. Renewals of registration shall be filed with the Registry of Charitable Trusts by January 15 of each calendar year in which the commercial fundraiser for charitable purposes does business and shall be effective for one year. A registration or renewal fee of two hundred dollars (\$200) shall be required for registration of a commercial fundraiser for charitable purposes, and shall be payable by certified or cashier's check to the Attorney General's Registry of Charitable Trusts at the time of registration or renewal. The Attorney General may adjust the annual registration or renewal fee, or means of payment, as needed pursuant to this section. The Attorney General's Registry of Charitable Trusts may grant extensions of time to file annual registration as required, pursuant to subdivision (b) of Section 12586. No separate fee shall be charged by the Attorney General for electronic registration, electronic renewal, or electronic repayment of fees.

(c) A commercial fundraiser for charitable purposes shall file with the Attorney General's Registry of Charitable Trusts an annual financial report on a form provided by the Attorney General, accounting for all funds collected pursuant to any solicitation for charitable purposes during the preceding calendar year. The annual financial report shall be filed with the Attorney General's Registry of Charitable Trusts no later than 30 days after the close of the preceding calendar year.

(d) The contents of the forms for annual registration and annual financial reporting by commercial fundraisers for charitable purposes shall be established by the Attorney General in a manner consistent with the procedures set forth in subdivisions (a) and (b) of Section 12586. The annual financial report shall require a detailed, itemized accounting of funds, assets, or property, solicited for charitable purposes on behalf of each charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or for each charitable purpose during the accounting period, and shall include, among other data, the following information for funds, assets, or property, solicited by the commercial fundraiser for charitable purposes:

(1) Total revenue.

(2) ~~The fee or commission~~ *fees or commissions* charged by the commercial fundraiser for charitable purposes.

1 (3) Salaries paid by the commercial fundraiser for charitable
2 purposes to its officers and employees.

3 (4) Fundraising expenses.

4 (5) Distributions to the identified charitable organization or
5 purpose.

6 (6) The names and addresses of any director, officer, or
7 employee of the commercial fundraiser for charitable purposes
8 who is a director, officer, or employee of any charitable
9 organization listed in the annual financial report.

10 (e) A commercial fundraiser for charitable purposes that obtains
11 a majority of its inventory for sale by the purchase, receipt, or
12 control for resale to the general public, of salvageable personal
13 property solicited by an organization qualified to solicit donations
14 pursuant to Section 148.3 of the Welfare and Institutions Code
15 shall file with the Attorney General's Registry of Charitable Trusts,
16 and not with the sheriff of any county, an annual financial report
17 on a form provided by the Attorney General that is separate and
18 distinct from forms filed by other commercial fundraisers for
19 charitable purposes pursuant to subdivisions (c) and (d).

20 (f) It shall be unlawful for any commercial fundraiser for
21 charitable purposes to solicit funds in this state for charitable
22 purposes unless the commercial fundraiser for charitable purposes
23 has complied with the registration or annual renewal and financial
24 reporting requirements of this article. Failure to comply with these
25 registration or annual renewal and financial reporting requirements
26 shall be grounds for injunction against solicitation in this state for
27 charitable purposes and other civil remedies provided by law.

28 (g) A commercial fundraiser for charitable purposes is a
29 constructive trustee for charitable purposes as to all funds collected
30 pursuant to solicitation for charitable purposes and shall account
31 to the Attorney General for all funds. A commercial fundraiser for
32 charitable purposes is subject to the Attorney General's supervision
33 and enforcement over charitable funds and assets to the same extent
34 as a trustee for charitable purposes under this article.

35 (h) Not less than 10 working days prior to the commencement
36 of each solicitation campaign, event, or service, or not later than
37 commencement of solicitation for solicitations to aid victims of
38 emergency hardship or disasters, a commercial fundraiser for
39 charitable purposes shall file with the Attorney General's Registry

1 of Charitable Trusts a notice on a form prescribed by the Attorney
2 General that sets forth all of the following:

3 (1) The name, address, and telephone number of the commercial
4 fundraiser for charitable purposes.

5 (2) The name, address, and telephone number of the charitable
6 organization with whom the commercial fundraiser has contracted.

7 (3) The fundraising methods to be used.

8 (4) The projected dates when performance under the contract
9 will commence and terminate.

10 (5) The name, address, and telephone number of the person
11 responsible for directing and supervising the work of the
12 commercial fundraiser under the contract.

13 (i) There shall be a written contract between a commercial
14 fundraiser for charitable purposes and a charitable organization
15 for each solicitation campaign, event, or service, that shall be
16 signed by the authorized contracting officer for the commercial
17 fundraiser and by an official of the charitable organization who is
18 authorized to sign by the organization's governing body. The
19 contract shall be available for inspection by the Attorney General
20 and shall contain all of the following provisions:

21 (1) The legal name and address of the charitable organization
22 as registered with the Registry of Charitable Trusts, unless the
23 charitable organization is exempt from registration.

24 (2) A statement of the charitable purpose for which the
25 solicitation campaign, event, or service is being conducted.

26 (3) A statement of the respective obligations of the commercial
27 fundraiser and the charitable organization.

28 (4) If the commercial fundraiser is to be paid a fixed fee, a
29 statement of the fee to be paid to the commercial fundraiser and a
30 good faith estimate of what percentage the fee will constitute of
31 the total contributions received. The contract shall clearly disclose
32 the assumptions upon which the estimate is based, and the stated
33 assumptions shall be based upon all of the relevant facts known
34 to the commercial fundraiser regarding the solicitation to be
35 conducted by the commercial fundraiser.

36 (5) If a percentage fee is to be paid to the commercial fundraiser,
37 a statement of the percentage of the total contributions received
38 that will be remitted to or retained by the charitable organization,
39 or, if the solicitation involves the sale of goods or services or the
40 sale of admissions to a fundraising event, the percentage of the

1 purchase price that will be remitted to the charitable organization.
2 The stated percentage shall be calculated by subtracting from
3 contributions received and sales receipts not only the commercial
4 fundraiser's fee, but also any additional amounts that the charitable
5 organization is obligated to pay as fundraising costs.

6 (6) The effective and termination dates of the contract and the
7 date solicitation activity is to commence within the state.

8 (7) A provision that requires that each contribution in the control
9 or custody of the commercial fundraiser shall in its entirety and
10 within five working days of its receipt comply with either of the
11 following:

12 (A) Be deposited in an account at a bank or other federally
13 insured financial institution that is solely in the name of the
14 charitable organization and over which the charitable organization
15 has sole control of withdrawals.

16 (B) Be delivered to the charitable organization in person, by
17 United States express mail, or by another method of delivery
18 providing for overnight delivery.

19 (8) A statement that the charitable organization exercises control
20 and approval over the content and frequency of any solicitation.

21 (9) If the commercial fundraiser proposes to make any payment
22 in cash or in kind to any person or legal entity to secure any
23 person's attendance at, or sponsorship, approval, or endorsement
24 of, a charity fundraising event, the maximum dollar amount of
25 those payments shall be set forth in the contract. "Charity
26 fundraising event" means any gathering of persons, including, but
27 not limited to, a party, banquet, concert, or show, that is held for
28 the purpose or claimed purpose of raising funds for any charitable
29 purpose or organization.

30 (10) A provision that includes all of the following statements:

31 (A) The charitable organization has the right to cancel the
32 contract without cost, penalty, or liability for a period of 10 days
33 following the date on which the contract is executed.

34 (B) The charitable organization may cancel the contract by
35 serving a written notice of cancellation on the commercial
36 fundraiser.

37 (C) If mailed, service shall be by certified mail, return receipt
38 requested, and cancellation shall be deemed effective upon the
39 expiration of five calendar days from the date of mailing.

1 (D) Any funds collected after effective notice that the contract
2 has been canceled shall be deemed to be held in trust for the benefit
3 of the charitable organization without deduction for costs or
4 expenses of any nature.

5 (E) The charitable organization shall be entitled to recover all
6 funds collected after the date of cancellation.

7 (11) A provision that includes all of the following statements:

8 (A) Following the initial 10-day cancellation period, the
9 charitable organization may terminate the contract by giving 30
10 days' written notice.

11 (B) If mailed, service of the notice shall be by certified mail,
12 return receipt requested, and shall be deemed effective upon the
13 expiration of five calendar days from the date of mailing.

14 (C) In the event of termination under this subdivision, the
15 charitable organization shall be liable for services provided by the
16 commercial fundraiser up to 30 days after the effective service of
17 the notice.

18 (12) A provision that, following the initial 10-day cancellation
19 period, the charitable organization may terminate the contract at
20 any time upon written notice, without payment or compensation
21 of any kind to the commercial fundraiser, if the commercial
22 fundraiser or its agents, employees, or representatives do any of
23 the following:

24 (A) Make any material misrepresentations in the course of
25 solicitations or with respect to the charitable organization.

26 (B) Are found by the charitable organization to have been
27 convicted of a crime arising from the conduct of a solicitation for
28 a charitable organization or purpose punishable as a misdemeanor
29 or a felony.

30 (C) Otherwise conduct fundraising activities in a manner that
31 causes or could cause public disparagement of the charitable
32 organization's good name or good will.

33 (13) Any other information required by the regulations of the
34 Attorney General.

35 (j) It shall be unlawful for a commercial fundraiser for charitable
36 purposes to not disclose the percentage of total fundraising
37 expenses of the fundraiser upon receiving a written or oral request
38 from a person solicited for a contribution for a charitable purpose.
39 "Percentage of total fundraising expenses," as used in this section,
40 means the ratio of the total expenses of the fundraiser to the total

1 revenue received by the fundraiser for the charitable purpose for
2 which funds are being solicited, as reported on the most recent
3 financial report filed with the Attorney General's Registry of
4 Charitable Trusts. A commercial fundraiser shall disclose this
5 information in writing within five working days from receipt of a
6 request by mail or facsimile. A commercial fundraiser shall orally
7 disclose this information immediately upon a request made in
8 person or in a telephone conversation and shall follow this response
9 with a written disclosure within five working days. Failure to
10 comply with the requirements of this subdivision shall be grounds
11 for an injunction against solicitation in this state for charitable
12 purposes and other civil remedies provided by law.

13 (k) If the Attorney General issues a report to the public
14 containing information obtained from registration forms or
15 financial report forms filed by commercial fundraisers for
16 charitable purposes, there shall be a separate section concerning
17 commercial fundraisers for charitable purposes that obtain a
18 majority of their inventory for sale by the purchase, receipt, or
19 control for resale to the general public, of salvageable personal
20 property solicited by an organization qualified to solicit donations
21 pursuant to Section 148.3 of the Welfare and Institutions Code.
22 The report shall include an explanation of the distinctions between
23 these thrift store operations and other types of commercial
24 fundraising.

25 (l) No person may act as a commercial fundraiser for charitable
26 purposes if that person, any officer or director of that person's
27 business, any person with a controlling interest in the business, or
28 any person the commercial fundraiser employs, engages, or
29 procures to solicit for compensation, has been convicted by a court
30 of any state or the United States of a crime arising from the conduct
31 of a solicitation for a charitable organization or purpose punishable
32 as a misdemeanor or felony.

33 (m) A commercial fundraiser for charitable purposes shall not
34 solicit in the state on behalf of a charitable organization unless that
35 charitable organization is registered or is exempt from registration
36 with the Attorney General's Registry of Charitable Trusts.

37 (n) If any provision of this section or the application thereof to
38 any person or circumstances is held invalid, that invalidity shall
39 not affect any other provision or application of this section that

- 1 can be given effect without the invalid provision or application,
- 2 and to this end the provisions of this section are severable.

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