

AMENDED IN ASSEMBLY APRIL 16, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2327

Introduced by Assembly Member Feuer

February 24, 2012

An act to amend Section 12591.1 of the Government Code, relating to charitable organizations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2327, as amended, Feuer. Charitable organizations: enforcement.

Under existing law, the Supervision of Trustees and Fundraisers for Charitable Purposes Act governs charitable corporations, unincorporated associations trustees, commercial fundraisers, fundraising counsel, commercial coventurers, and other legal entities who hold or solicit property for charitable purposes over which the Attorney General has enforcement and supervisory powers. The act requires that any person who violates any provision of the act with the intent to deceive or defraud be liable for a specified civil penalty. The act also requires that any person who violates any provision of the act, regardless of intent, is liable for a specified civil penalty.

This bill would revise those enforcement provisions to instead provide that the Attorney General may issue a cease and desist order whenever the Attorney General finds that any person or entity that the act applies to has committed an act that would constitute a violation of, or is operating in violation of, any provision of the act. The bill would authorize the Attorney General to impose a specified penalty on any person or entity for each act or omission that constitutes a violation of the act, subject to certain procedures. The bill would also authorize the Attorney General, if the Attorney General had assessed a penalty against

a person or entity pursuant to these provisions, to suspend the registration of that person or entity in accordance with certain procedures. The bill would authorize a person or entity that the Attorney General has filed an action against pursuant to the act to request a hearing to review that action in accordance with certain procedures. The bill would authorize the Attorney General to seek injunctive relief to enforce the provisions of this act.

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

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

1 SECTION 1. Section 12591.1 of the Government Code is
2 amended to read:
3 12591.1. (a) Any person who violates any provision of this
4 article with intent to deceive or defraud any charity or individual
5 is liable for a civil penalty not exceeding ten thousand dollars
6 (\$10,000).
7 (b) The Attorney General may issue a cease and desist order
8 whenever the Attorney General finds that any entity or person that
9 is subject to the provisions of this article pursuant to Section 12581,
10 or its agent, servant, or employee, has committed an act that would
11 constitute a violation of, or is operating in violation of, this article,
12 or its implementing regulations, or an order issued by the Attorney
13 General, including, but not limited to, all of the following:
14 (1) Has refused or failed, after notice, to produce any records
15 of the organization or to disclose any information required to be
16 disclosed under this article or Chapter 4 (commencing with Section
17 300) of Division 1 of Title 11 of the California Code of
18 Regulations.
19 (2) Has made a material false statement in an application,
20 statement, or report required to be filed under this article or Chapter
21 4 (commencing with Section 300) of Division 1 of Title 11 of the
22 California Code of Regulations.
23 (3) Has failed to file a financial report, or has filed an incomplete
24 financial report, that is required by this article or Chapter 4
25 (commencing with Section 300) of Division 1 of Title 11 of the
26 California Code of Regulations.
27 (4) Has engaged in any act prohibited pursuant to Section
28 12599.6.

1 (c) The Attorney General may impose a penalty on any person
2 or entity, not to exceed one thousand dollars (\$1,000) per act or
3 omission, for each act or omission that constitutes a violation of
4 this article or Chapter 4 (commencing with Section 300) of
5 Division 1 of Title 11 of the California Code of Regulations. At
6 least five days prior to imposing that penalty, the Attorney General
7 shall provide notice to the person or entity that committed the
8 violation by certified mail to the address of record at the Registry
9 of Charitable Trusts. Penalties shall accrue, commencing on the
10 fifth day after notice is given, at a rate of one hundred dollars
11 (\$100) per day for each day until that person or entity corrects that
12 violation. Penalties shall stop accruing as of the date set forth in
13 the written notice provided by the Attorney General that the
14 violation or omission subject to penalties has been corrected or
15 remedied.

16 (d) If the Attorney General assesses penalties under this section,
17 the Attorney General may suspend the registration of that person
18 or entity in accordance with the procedures set forth in Section
19 999.6 of Title 11 of the California Code of Regulations.
20 Registration shall be automatically suspended until the fine is paid
21 and no registration shall be renewed until the fine is paid.

22 (e) Any person or entity that the Attorney General has filed an
23 action against pursuant to this section may request a hearing to
24 review that action in accordance with the procedures set forth in
25 Chapter 15 (commencing with Section 999.1) of Division 1 of
26 Title 11 of the California Code of Regulations and rules adopted
27 by the Attorney General. Any request for hearing shall be made
28 within 30 days after the Attorney General has served the person
29 with notice of the action, ~~which~~. *That* notice shall be deemed
30 effective upon mailing.

31 (f) The Attorney General may apply to a superior court of the
32 State of California for relief, and the court may issue a temporary
33 injunction or a permanent injunction to restrain violations of this
34 chapter, appoint a receiver, order restitution or an accounting, or
35 grant other relief as may be appropriate to ensure the due
36 application of charitable funds. Proceedings thereon shall be
37 brought in the name of the state.

38 (g) All penalties paid to the Attorney General pursuant to this
39 section shall be used by the Department of Justice in accordance
40 with the provisions of Section 12586.2.

1 *(h) Any offense committed under this article involving a*
2 *solicitation may be deemed to have been committed at either the*
3 *place at which the solicitation was initiated or at the place where*
4 *the solicitation was received.*

5 *(i) Any person who violates only subdivision (c), (d), (e), or (f)*
6 *of Section 12586.1 shall not be liable for a civil penalty under*
7 *subdivision (b) if the person (1) has not received reasonable notice*
8 *of the violation and (2) has not been given a reasonable*
9 *opportunity to correct the violation. The Attorney General shall*
10 *notify in writing a person who violates only subdivision (c), (d),*
11 *(e), or (f) of Section 12586.1 that he or she has 30 days to correct*
12 *the violation.*

13 *(j) The recovery of a civil penalty pursuant to this section*
14 *precludes assessment of a late fee pursuant to Section 12586.1 for*
15 *the same offense.*