

AMENDED IN ASSEMBLY APRIL 7, 2015  
AMENDED IN ASSEMBLY MARCH 19, 2015  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 556**

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**Introduced by Assembly Member Irwin**

February 23, 2015

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An act to amend Section 17510.85 of the Business and Professions Code, to add Section 2224.5 to the Civil Code, and to amend ~~Section 12596~~ *Sections 12596 and 12599* of the Government Code, relating to trusts.

LEGISLATIVE COUNSEL'S DIGEST

AB 556, as amended, Irwin. Trusts: regulation and enforcement.

Existing law requires an individual or entity who for compensation solicits funds or property for charitable purposes to disclose that the solicitation is being conducted by a commercial fundraiser for a charitable purpose and the registered name of the commercial fundraiser.

This bill would ~~also require an individual or entity who solicits funds or property for charitable purposes with the participation of a fundraising counsel for charitable purposes to make specified disclosures regarding the fundraising counsel. The bill would require~~ *require* the disclosures, if printed or if presented electronically, to be in at least 12-point type, and be clear and conspicuous.

Existing law, the Supervision of Trustees and Fundraisers for Charitable Purposes Act, generally regulates charitable corporations, trustees, and other legal entities holding property for charitable purposes, commercial fundraisers for charitable purposes, and fundraising counsel for charitable purposes, among others, over which the state or the

Attorney General has enforcement or supervisory powers. *Existing law defines a commercial fundraiser for charitable purposes to mean any individual, corporation, unincorporated association, or other legal entity who, for compensation, engages in specified activities, including, among other things, soliciting funds, assets, or property in this state for charitable purposes.* Existing law requires the Attorney General to establish and maintain a register of charitable corporations, unincorporated associations, and trustees subject to these provisions and of the particular trust or other relationship under which they hold property for charitable purposes. Existing law authorizes the Attorney General to bring any action against trustees or against any charitable corporation or director or officer thereof, to enforce a charitable trust, to impress property with a trust for charitable purposes, or to recover property or the proceeds thereof at any time within 10 years after the cause of action accrued.

*This bill would expand the definition of a commercial fundraiser for charitable purposes to include any individual, corporation, unincorporated association, or other legal entity that plans, manages, advises, counsels, consults, or prepares material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes, as specified.*

This bill would authorize the Attorney General to bring an action for a violation of these provisions at any time within 10 years after the cause of action accrued. The bill would also authorize the Attorney General to bring an action for civil liability against a person who aids or abets a violation of these provisions at any time within 10 years after the cause of action accrued.

Existing law provides that one who wrongfully detains a thing is an involuntary trustee thereof for the benefit of the owner, and that one who gains a thing by fraud, or other wrongful act is an involuntary trustee of the thing gained for the benefit of the owner.

This bill would authorize the Attorney General to bring an action for a violation of these provisions at any time within 10 years after the cause of action accrued.

This bill would also authorize the Attorney General to bring an action for civil liability against a person who aids or abets a violation of these provisions at any time within 10 years after the cause of action accrued.

Existing law, the Nonprofit Corporation Law, set forth standards of conduct for directors and officers of nonprofit public benefit corporations and provides that it is a crime for any director or officer

of any corporation among other things, to knowingly engage in specified acts relating to fraud, to make materially false reports, to receive or acquire possession of the property of the corporation, or to falsify the books or accounts of the corporation.

This bill would authorize the Attorney General to bring an action for a violation of these provisions at any time within 10 years after the cause of action accrued. The bill would also authorize the Attorney General to bring an action for civil liability against a person who aids or abets a violation of the standards of conduct for directors and officers of nonprofit public benefit corporations at any time within 10 years after the cause of action accrued.

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 17510.85 of the Business and Professions  
2 Code is amended to read:

3 17510.85. (a) An individual, corporation, or other legal entity  
4 who for compensation solicits funds or other property in this state  
5 for charitable purposes shall disclose prior to an oral solicitation  
6 or sales solicitation made by direct personal contact, radio,  
7 television, telephone, or over the Internet, or at the same time as  
8 a written solicitation or sales solicitation:

9 (1) That the solicitation or sales solicitation is being conducted  
10 by a commercial fundraiser for charitable purposes.

11 (2) The name of the commercial fundraiser for charitable  
12 purposes as registered with the Attorney General pursuant to  
13 Section 12599 of the Government Code.

14 ~~(b) An individual, corporation, or other legal entity who solicits~~  
15 ~~funds or other property in this state for charitable purposes with~~  
16 ~~the participation of a fundraising counsel for charitable purposes,~~  
17 ~~as defined in Section 12599.1 of the Government Code, shall~~  
18 ~~disclose prior to an oral solicitation or sales solicitation made by~~  
19 ~~direct personal contact, radio, television, telephone, or via the~~  
20 ~~Internet, or at the same time as a written solicitation or sales~~  
21 ~~solicitation:~~

22 ~~(1) That the solicitation or sales solicitation is being conducted~~  
23 ~~with the participation of a fundraising counsel for charitable~~  
24 ~~purposes.~~

1     ~~(2) The name of the fundraising counsel for charitable purposes~~  
2 ~~as registered with the Attorney General pursuant to Section 12599.1~~  
3 ~~of the Government Code.~~

4     ~~(e)~~

5     (b) The disclosures required pursuant to this section, if printed  
6 or if presented electronically, shall be in at least 12-point type, and  
7 shall be clear and conspicuous, as defined in Section 17601.

8     SEC. 2. Section 2224.5 is added to the Civil Code, to read:

9     2224.5. An action brought by the Attorney General pursuant  
10 to Section 2223 or 2224 may be brought at any time within 10  
11 years after the cause of action accrued.

12     SEC. 3. Section 12596 of the Government Code is amended  
13 to read:

14     12596. (a) A civil action brought by the Attorney General  
15 against trustees or other persons holding property in trust for  
16 charitable purposes or against any charitable corporation or any  
17 director or officer thereof to enforce a charitable trust or to impress  
18 property with a trust for charitable purposes or to recover property  
19 or the proceeds thereof for and on behalf of any charitable trust or  
20 corporation, may be brought at any time within 10 years after the  
21 cause of action accrued.

22     (b) A civil action brought by the Attorney General for a violation  
23 of this article, pursuant to Section 2223 or 2224 of the Civil Code,  
24 or pursuant to Division 2 (commencing with Section 5000) of Title  
25 1 of the Corporations Code, may be brought at any time within 10  
26 years after the cause of action accrued.

27     (c) Notwithstanding Section 12581, the Attorney General may  
28 bring a civil action against a person who aids or abets a violation  
29 of this article, Section 2223 or 2224 of the Civil Code, or Article  
30 3 (commencing with Section 5230) of Chapter 2 of Division 2 of  
31 Title 1 of the Corporations Code, at any time within 10 years after  
32 the cause of action accrued.

33     SEC. 4. Section 12599 of the Government Code is amended to  
34 read:

35     12599. (a) “Commercial fundraiser for charitable purposes”  
36 means any individual, corporation, unincorporated association, or  
37 other legal entity who for compensation does any of the following:

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

1 (2) As a result of a solicitation of funds, assets, or property in  
2 this state for charitable purposes, receives or controls the funds,  
3 assets, or property solicited for charitable ~~purposes~~ purposes,  
4 including indirectly controlling the funds through either of the  
5 following means:

6 (A) Maintaining an interest in an escrow account into which  
7 solicited funds are deposited.

8 (B) Maintaining access to, or the right to access, funds, assets,  
9 or property received by a caging company as a result of the  
10 solicitation.

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

14 (4) Plans, manages, advises, counsels, consults, or prepares  
15 material for, or with respect to, the solicitation in this state of  
16 funds, assets, or property for charitable purposes, and is  
17 compensated by a percentage interest in the funds, assets, or  
18 property received through a solicitation campaign, rather than by  
19 a flat fee. This paragraph shall not apply to any entity described  
20 in subdivision (b) of Section 12599.1.

21 (5) (A) Plans, manages, advises, counsels, consults, or prepares  
22 material for, or with respect to, the solicitation in this state of  
23 funds, assets, or property for charitable purposes, and does either  
24 of the following:

25 (i) Has an ownership or management interest in any other entity  
26 that receives or controls the funds, assets, or property solicited  
27 for charitable purposes.

28 (ii) Receives any material financial benefit, directly or indirectly,  
29 from any other individual or entity that receives or controls the  
30 funds, assets, or property solicited for charitable purposes, other  
31 than the nonprofit soliciting the funds, assets, or property for  
32 charitable purposes.

33 (B) This paragraph shall not apply to any entity described in  
34 subdivision (b) of Section 12599.1.

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

1 A commercial fundraiser for charitable purposes shall not include  
2 a “trustee” as defined in Section 12582 or 12583, a “charitable  
3 corporation” as defined in Section 12582.1, or any employee  
4 thereof. A commercial fundraiser for charitable purposes shall not  
5 include an individual who is employed by or under the control of  
6 a commercial fundraiser for charitable purposes registered with  
7 the Attorney General. A commercial fundraiser for charitable  
8 purposes shall not include any federally insured financial institution  
9 that holds as a depository funds received as a result of a solicitation  
10 for charitable purposes.

11 As used in this section, “charitable purposes” includes any  
12 solicitation in which the name of any organization of law  
13 enforcement personnel, firefighters, or other persons who protect  
14 the public safety is used or referred to as an inducement for  
15 transferring any funds, assets, or property, unless the only  
16 expressed or implied purpose of the solicitation is for the sole  
17 benefit of the actual active membership of the organization.

18 (b) A commercial fundraiser for charitable purposes shall, prior  
19 to soliciting any funds, assets, or property, including salvageable  
20 personal property, in California for charitable purposes, or prior  
21 to receiving and controlling any funds, assets, or property,  
22 including salvageable personal property, as a result of a solicitation  
23 in this state for charitable purposes, register with the Attorney  
24 General’s Registry of Charitable Trusts on a registration form  
25 provided by the Attorney General. Renewals of registration shall  
26 be filed with the Registry of Charitable Trusts by January 15 of  
27 each calendar year in which the commercial fundraiser for  
28 charitable purposes does business and shall be effective for one  
29 year. A registration or renewal fee of two hundred dollars (\$200)  
30 shall be required for registration of a commercial fundraiser for  
31 charitable purposes, and shall be payable by certified or cashier’s  
32 check to the Attorney General’s Registry of Charitable Trusts at  
33 the time of registration or renewal. The Attorney General may  
34 adjust the annual registration or renewal fee, or means of payment,  
35 as needed pursuant to this section. The Attorney General’s Registry  
36 of Charitable Trusts may grant extensions of time to file annual  
37 registration as required, pursuant to subdivision (b) of Section  
38 12586. No separate fee shall be charged by the Attorney General  
39 for electronic registration, electronic renewal, or electronic  
40 repayment of fees.

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

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

- 21 (1) Total revenue.
- 22 (2) The fee or commission charged by the commercial fundraiser  
23 for charitable purposes.
- 24 (3) Salaries paid by the commercial fundraiser for charitable  
25 purposes to its officers and employees.
- 26 (4) Fundraising expenses.
- 27 (5) Distributions to the identified charitable organization or  
28 purpose.
- 29 (6) The names and addresses of any director, officer, or  
30 employee of the commercial fundraiser for charitable purposes  
31 who is a director, officer, or employee of any charitable  
32 organization listed in the annual financial report.

33 (e) A commercial fundraiser for charitable purposes that obtains  
34 a majority of its inventory for sale by the purchase, receipt, or  
35 control for resale to the general public, of salvageable personal  
36 property solicited by an organization qualified to solicit donations  
37 pursuant to Section 148.3 of the Welfare and Institutions Code  
38 shall file with the Attorney General’s Registry of Charitable Trusts,  
39 and not with the sheriff of any county, an annual financial report  
40 on a form provided by the Attorney General that is separate and

1 distinct from forms filed by other commercial fundraisers for  
2 charitable purposes pursuant to subdivisions (c) and (d).

3 (f) It shall be unlawful for any commercial fundraiser for  
4 charitable purposes to solicit funds in this state for charitable  
5 purposes unless the commercial fundraiser for charitable purposes  
6 has complied with the registration or annual renewal and financial  
7 reporting requirements of this article. Failure to comply with these  
8 registration or annual renewal and financial reporting requirements  
9 shall be grounds for injunction against solicitation in this state for  
10 charitable purposes and other civil remedies provided by law.

11 (g) A commercial fundraiser for charitable purposes is a  
12 constructive trustee for charitable purposes as to all funds collected  
13 pursuant to solicitation for charitable purposes and shall account  
14 to the Attorney General for all funds. A commercial fundraiser for  
15 charitable purposes is subject to the Attorney General's supervision  
16 and enforcement over charitable funds and assets to the same extent  
17 as a trustee for charitable purposes under this article.

18 (h) Not less than 10 working days prior to the commencement  
19 of each solicitation campaign, event, or service, or not later than  
20 commencement of solicitation for solicitations to aid victims of  
21 emergency hardship or disasters, a commercial fundraiser for  
22 charitable purposes shall file with the Attorney General's Registry  
23 of Charitable Trusts a notice on a form prescribed by the Attorney  
24 General that sets forth all of the following:

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

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

29 (3) The fundraising methods to be used.

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

32 (5) The name, address, and telephone number of the person  
33 responsible for directing and supervising the work of the  
34 commercial fundraiser under the contract.

35 (i) There shall be a written contract between a commercial  
36 fundraiser for charitable purposes and a charitable organization  
37 for each solicitation campaign, event, or service, that shall be  
38 signed by the authorized contracting officer for the commercial  
39 fundraiser and by an official of the charitable organization who is  
40 authorized to sign by the organization's governing body. The

1 contract shall be available for inspection by the Attorney General  
2 and shall contain all of the following provisions:

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

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

8 (3) A statement of the respective obligations of the commercial  
9 fundraiser and the charitable organization.

10 (4) If the commercial fundraiser is to be paid a fixed fee, a  
11 statement of the fee to be paid to the commercial fundraiser and a  
12 good faith estimate of what percentage the fee will constitute of  
13 the total contributions received. The contract shall clearly disclose  
14 the assumptions upon which the estimate is based, and the stated  
15 assumptions shall be based upon all of the relevant facts known  
16 to the commercial fundraiser regarding the solicitation to be  
17 conducted by the commercial fundraiser.

18 (5) If a percentage fee is to be paid to the commercial fundraiser,  
19 a statement of the percentage of the total contributions received  
20 that will be remitted to or retained by the charitable organization,  
21 or, if the solicitation involves the sale of goods or services or the  
22 sale of admissions to a fundraising event, the percentage of the  
23 purchase price that will be remitted to the charitable organization.  
24 The stated percentage shall be calculated by subtracting from  
25 contributions received and sales receipts not only the commercial  
26 fundraiser's fee, but also any additional amounts that the charitable  
27 organization is obligated to pay as fundraising costs.

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

30 (7) A provision that requires that each contribution in the control  
31 or custody of the commercial fundraiser shall in its entirety and  
32 within five working days of its receipt comply with either of the  
33 following:

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

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

- 1 (8) A statement that the charitable organization exercises control
- 2 and approval over the content and frequency of any solicitation.
- 3 (9) If the commercial fundraiser proposes to make any payment
- 4 in cash or in kind to any person or legal entity to secure any
- 5 person’s attendance at, or sponsorship, approval, or endorsement
- 6 of, a charity fundraising event, the maximum dollar amount of
- 7 those payments shall be set forth in the contract. “Charity
- 8 fundraising event” means any gathering of persons, including, but
- 9 not limited to, a party, banquet, concert, or show, that is held for
- 10 the purpose or claimed purpose of raising funds for any charitable
- 11 purpose or organization.
- 12 (10) A provision that includes all of the following statements:
- 13 (A) The charitable organization has the right to cancel the
- 14 contract without cost, penalty, or liability for a period of 10 days
- 15 following the date on which the contract is executed.
- 16 (B) The charitable organization may cancel the contract by
- 17 serving a written notice of cancellation on the commercial
- 18 fundraiser.
- 19 (C) If mailed, service shall be by certified mail, return receipt
- 20 requested, and cancellation shall be deemed effective upon the
- 21 expiration of five calendar days from the date of mailing.
- 22 (D) Any funds collected after effective notice that the contract
- 23 has been canceled shall be deemed to be held in trust for the benefit
- 24 of the charitable organization without deduction for costs or
- 25 expenses of any nature.
- 26 (E) The charitable organization shall be entitled to recover all
- 27 funds collected after the date of cancellation.
- 28 (11) A provision that includes all of the following statements:
- 29 (A) Following the initial 10-day cancellation period, the
- 30 charitable organization may terminate the contract by giving 30
- 31 days’ written notice.
- 32 (B) If mailed, service of the notice shall be by certified mail,
- 33 return receipt requested, and shall be deemed effective upon the
- 34 expiration of five calendar days from the date of mailing.
- 35 (C) In the event of termination under this subdivision, the
- 36 charitable organization shall be liable for services provided by the
- 37 commercial fundraiser up to 30 days after the effective service of
- 38 the notice.
- 39 (12) A provision that, following the initial 10-day cancellation
- 40 period, the charitable organization may terminate the contract at

1 any time upon written notice, without payment or compensation  
2 of any kind to the commercial fundraiser, if the commercial  
3 fundraiser or its agents, employees, or representatives do any of  
4 the following:

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

7 (B) Are found by the charitable organization to have been  
8 convicted of a crime arising from the conduct of a solicitation for  
9 a charitable organization or purpose punishable as a misdemeanor  
10 or a felony.

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

14 (13) Any other information required by the regulations of the  
15 Attorney General.

16 (j) It shall be unlawful for a commercial fundraiser for charitable  
17 purposes to not disclose the percentage of total fundraising  
18 expenses of the fundraiser upon receiving a written or oral request  
19 from a person solicited for a contribution for a charitable purpose.  
20 "Percentage of total fundraising expenses," as used in this section,  
21 means the ratio of the total expenses of the fundraiser to the total  
22 revenue received by the fundraiser for the charitable purpose for  
23 which funds are being solicited, as reported on the most recent  
24 financial report filed with the Attorney General's Registry of  
25 Charitable Trusts. A commercial fundraiser shall disclose this  
26 information in writing within five working days from receipt of a  
27 request by mail or facsimile. A commercial fundraiser shall orally  
28 disclose this information immediately upon a request made in  
29 person or in a telephone conversation and shall follow this response  
30 with a written disclosure within five working days. Failure to  
31 comply with the requirements of this subdivision shall be grounds  
32 for an injunction against solicitation in this state for charitable  
33 purposes and other civil remedies provided by law.

34 (k) If the Attorney General issues a report to the public  
35 containing information obtained from registration forms or  
36 financial report forms filed by commercial fundraisers for  
37 charitable purposes, there shall be a separate section concerning  
38 commercial fundraisers for charitable purposes that obtain a  
39 majority of their inventory for sale by the purchase, receipt, or  
40 control for resale to the general public, of salvageable personal

1 property solicited by an organization qualified to solicit donations  
2 pursuant to Section 148.3 of the Welfare and Institutions Code.  
3 The report shall include an explanation of the distinctions between  
4 these thrift store operations and other types of commercial  
5 fundraising.

6 (l) No person may act as a commercial fundraiser for charitable  
7 purposes if that person, any officer or director of that person's  
8 business, any person with a controlling interest in the business, or  
9 any person the commercial fundraiser employs, engages, or  
10 procures to solicit for compensation, has been convicted by a court  
11 of any state or the United States of a crime arising from the conduct  
12 of a solicitation for a charitable organization or purpose punishable  
13 as a misdemeanor or felony.

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

18 (n) If any provision of this section or the application thereof to  
19 any person or circumstances is held invalid, that invalidity shall  
20 not affect any other provision or application of this section that  
21 can be given effect without the invalid provision or application,  
22 and to this end the provisions of this section are severable.