

AMENDED IN SENATE JUNE 19, 2015

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 Sections ~~12596 and 12599~~ 12596, 12599, and 12599.1 of the Government Code, relating to *charitable* trusts.

LEGISLATIVE COUNSEL'S DIGEST

AB 556, as amended, Irwin. ~~Trusts:~~ *Charitable 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 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 defines a fundraising counsel 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, planning, managing, or preparing material for the solicitation of funds, but who does not engage in specified activities, including, among other things, soliciting funds, assets, or property 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. *The bill would exclude from the definition of a commercial fundraiser for charitable purposes, a trustee, a charitable corporation, specified financial institutions, or an escrow agent or caging company, as defined, that receives or controls funds as a result of a solicitation for charitable purposes. The bill would list conditions in which a fundraising counsel for charitable purposes is deemed to receive or control funds, assets, or property. The bill would require an individual, corporation, unincorporated association, or other legal entity that does not meet the qualifications of fundraising counsel for charitable purposes to be deemed a commercial fundraiser for charitable purposes.*

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~~ *sets* 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:

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

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

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

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

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

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

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

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

28 (c) Notwithstanding Section 12581, the Attorney General may  
29 bring a civil action against a person who aids or abets a violation  
30 of this article, Section 2223 or 2224 of the Civil Code, or Article  
31 3 (commencing with Section 5230) of Chapter 2 of *Part 2 of*  
32 Division 2 of Title 1 of the Corporations Code, at any time within  
33 10 years after the cause of action accrued.

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

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

39 (1) Solicits funds, assets, or property in this state for charitable  
40 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, including  
4 indirectly controlling the funds through either of the following  
5 means: *purposes*.

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 funds,  
16 assets, or property for charitable purposes, ~~and is compensated by~~  
17 ~~a percentage interest in the funds, assets, or property received~~  
18 ~~through a solicitation campaign, rather than by a flat fee. This~~  
19 ~~paragraph shall not apply to any entity described in subdivision~~  
20 ~~(b) of Section 12599.1. but is disqualified as a fundraising counsel~~  
21 ~~for charitable purposes pursuant to subdivision (a) of Section~~  
22 ~~12599.1.~~

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

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

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

35 ~~(B) This paragraph shall not apply to any entity described in~~  
36 ~~subdivision (b) of Section 12599.1.~~

37 A commercial fundraiser for charitable purposes shall include  
38 any person, association of persons, corporation, or other entity that  
39 obtains a majority of its inventory for sale by the purchase, receipt,  
40 or 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 A commercial fundraiser for charitable purposes shall not include  
4 a “trustee” as defined in Section 12582 or 12583, a “charitable  
5 corporation” as defined in Section 12582.1, or any employee  
6 thereof. A commercial fundraiser for charitable purposes shall not  
7 include an individual who is employed by or under the control of  
8 a commercial fundraiser for charitable purposes registered with  
9 the Attorney General. A commercial fundraiser for charitable  
10 purposes shall not include any federally insured financial institution  
11 that ~~holds~~ *holds*, as a ~~depository~~ *depository*, funds received as a  
12 result of a solicitation for charitable ~~purposes~~ *purposes*, or an  
13 *escrow agent or caging company that receives or controls funds*  
14 *received as a result of a solicitation for charitable purposes. For*  
15 *purposes of this section, a caging company is a business that*  
16 *receives contributions, processes donor mail, and deposits all*  
17 *contributions to an account under the sole control of the charitable*  
18 *organization.*

19 As used in this section, “charitable purposes” includes any  
20 solicitation in which the name of any organization of law  
21 enforcement personnel, firefighters, or other persons who protect  
22 the public safety is used or referred to as an inducement for  
23 transferring any funds, assets, or property, unless the only  
24 expressed or implied purpose of the solicitation is for the sole  
25 benefit of the actual active membership of the organization.

26 (b) A commercial fundraiser for charitable purposes shall, prior  
27 to soliciting any funds, assets, or property, including salvageable  
28 personal property, in California for charitable purposes, or prior  
29 to receiving and controlling any funds, assets, or property,  
30 including salvageable personal property, as a result of a solicitation  
31 in this state for charitable purposes, register with the Attorney  
32 General’s Registry of Charitable Trusts on a registration form  
33 provided by the Attorney General. Renewals of registration shall  
34 be filed with the Registry of Charitable Trusts by January 15 of  
35 each calendar year in which the commercial fundraiser for  
36 charitable purposes does business and shall be effective for one  
37 year. A registration or renewal fee of two hundred dollars (\$200)  
38 shall be required for registration of a commercial fundraiser for  
39 charitable purposes, and shall be payable by certified or cashier’s  
40 check to the Attorney General’s Registry of Charitable Trusts at

1 the time of registration or renewal. The Attorney General may  
2 adjust the annual registration or renewal fee, or means of payment,  
3 as needed pursuant to this section. The Attorney General's Registry  
4 of Charitable Trusts may grant extensions of time to file annual  
5 registration as required, pursuant to subdivision (b) of Section  
6 12586. No separate fee shall be charged by the Attorney General  
7 for electronic registration, electronic renewal, or electronic  
8 repayment of fees.

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

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

29 (1) Total revenue.

30 (2) The fee or commission charged by the commercial fundraiser  
31 for charitable purposes.

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

34 (4) Fundraising expenses.

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

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

1 (e) A commercial fundraiser for charitable purposes that obtains  
2 a majority of its inventory for sale by the purchase, receipt, or  
3 control for resale to the general public, of salvageable personal  
4 property solicited by an organization qualified to solicit donations  
5 pursuant to Section 148.3 of the Welfare and Institutions Code  
6 shall file with the Attorney General’s Registry of Charitable Trusts,  
7 and not with the sheriff of any county, an annual financial report  
8 on a form provided by the Attorney General that is separate and  
9 distinct from forms filed by other commercial fundraisers for  
10 charitable purposes pursuant to subdivisions (c) and (d).

11 (f) It shall be unlawful for any commercial fundraiser for  
12 charitable purposes to solicit funds in this state for charitable  
13 purposes unless the commercial fundraiser for charitable purposes  
14 has complied with the registration or annual renewal and financial  
15 reporting requirements of this article. Failure to comply with these  
16 registration or annual renewal and financial reporting requirements  
17 shall be grounds for injunction against solicitation in this state for  
18 charitable purposes and other civil remedies provided by law.

19 (g) A commercial fundraiser for charitable purposes is a  
20 constructive trustee for charitable purposes as to all funds collected  
21 pursuant to solicitation for charitable purposes and shall account  
22 to the Attorney General for all funds. A commercial fundraiser for  
23 charitable purposes is subject to the Attorney General’s supervision  
24 and enforcement over charitable funds and assets to the same extent  
25 as a trustee for charitable purposes under this article.

26 (h) Not less than 10 working days prior to the commencement  
27 of each solicitation campaign, event, or service, or not later than  
28 commencement of solicitation for solicitations to aid victims of  
29 emergency hardship or disasters, a commercial fundraiser for  
30 charitable purposes shall file with the Attorney General’s Registry  
31 of Charitable Trusts a notice on a form prescribed by the Attorney  
32 General that sets forth all of the following:

- 33 (1) The name, address, and telephone number of the commercial  
34 fundraiser for charitable purposes.
- 35 (2) The name, address, and telephone number of the charitable  
36 organization with whom the commercial fundraiser has contracted.
- 37 (3) The fundraising methods to be used.
- 38 (4) The projected dates when performance under the contract  
39 will commence and terminate.

1 (5) The name, address, and telephone number of the person  
2 responsible for directing and supervising the work of the  
3 commercial fundraiser under the contract.

4 (i) There shall be a written contract between a commercial  
5 fundraiser for charitable purposes and a charitable organization  
6 for each solicitation campaign, event, or service, that shall be  
7 signed by the authorized contracting officer for the commercial  
8 fundraiser and by an official of the charitable organization who is  
9 authorized to sign by the organization's governing body. The  
10 contract shall be available for inspection by the Attorney General  
11 and shall contain all of the following provisions:

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

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

17 (3) A statement of the respective obligations of the commercial  
18 fundraiser and the charitable organization.

19 (4) If the commercial fundraiser is to be paid a fixed fee, a  
20 statement of the fee to be paid to the commercial fundraiser and a  
21 good faith estimate of what percentage the fee will constitute of  
22 the total contributions received. The contract shall clearly disclose  
23 the assumptions upon which the estimate is based, and the stated  
24 assumptions shall be based upon all of the relevant facts known  
25 to the commercial fundraiser regarding the solicitation to be  
26 conducted by the commercial fundraiser.

27 (5) If a percentage fee is to be paid to the commercial fundraiser,  
28 a statement of the percentage of the total contributions received  
29 that will be remitted to or retained by the charitable organization,  
30 or, if the solicitation involves the sale of goods or services or the  
31 sale of admissions to a fundraising event, the percentage of the  
32 purchase price that will be remitted to the charitable organization.  
33 The stated percentage shall be calculated by subtracting from  
34 contributions received and sales receipts not only the commercial  
35 fundraiser's fee, but also any additional amounts that the charitable  
36 organization is obligated to pay as fundraising costs.

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

39 (7) A provision that requires that each contribution in the control  
40 or custody of the commercial fundraiser shall in its entirety and

1 within five working days of its receipt comply with either of the  
2 following:

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

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

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

12 (9) If the commercial fundraiser proposes to make any payment  
13 in cash or in kind to any person or legal entity to secure any  
14 person's attendance at, or sponsorship, approval, or endorsement  
15 of, a charity fundraising event, the maximum dollar amount of  
16 those payments shall be set forth in the contract. "Charity  
17 fundraising event" means any gathering of persons, including, but  
18 not limited to, a party, banquet, concert, or show, that is held for  
19 the purpose or claimed purpose of raising funds for any charitable  
20 purpose or organization.

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

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

25 (B) The charitable organization may cancel the contract by  
26 serving a written notice of cancellation on the commercial  
27 fundraiser.

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

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

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

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

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

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

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

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

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

16 (B) Are found by the charitable organization to have been  
17 convicted of a crime arising from the conduct of a solicitation for  
18 a charitable organization or purpose punishable as a misdemeanor  
19 or a felony.

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

23 (13) Any other information required by the regulations of the  
24 Attorney General.

25 (j) It shall be unlawful for a commercial fundraiser for charitable  
26 purposes to not disclose the percentage of total fundraising  
27 expenses of the fundraiser upon receiving a written or oral request  
28 from a person solicited for a contribution for a charitable purpose.  
29 "Percentage of total fundraising expenses," as used in this section,  
30 means the ratio of the total expenses of the fundraiser to the total  
31 revenue received by the fundraiser for the charitable purpose for  
32 which funds are being solicited, as reported on the most recent  
33 financial report filed with the Attorney General's Registry of  
34 Charitable Trusts. A commercial fundraiser shall disclose this  
35 information in writing within five working days from receipt of a  
36 request by mail or facsimile. A commercial fundraiser shall orally  
37 disclose this information immediately upon a request made in  
38 person or in a telephone conversation and shall follow this response  
39 with a written disclosure within five working days. Failure to  
40 comply with the requirements of this subdivision shall be grounds

1 for an injunction against solicitation in this state for charitable  
2 purposes and other civil remedies provided by law.

3 (k) If the Attorney General issues a report to the public  
4 containing information obtained from registration forms or  
5 financial report forms filed by commercial fundraisers for  
6 charitable purposes, there shall be a separate section concerning  
7 commercial fundraisers for charitable purposes that obtain a  
8 majority of their inventory for sale by the purchase, receipt, or  
9 control for resale to the general public, of salvageable personal  
10 property solicited by an organization qualified to solicit donations  
11 pursuant to Section 148.3 of the Welfare and Institutions Code.  
12 The report shall include an explanation of the distinctions between  
13 these thrift store operations and other types of commercial  
14 fundraising.

15 (l) No person may act as a commercial fundraiser for charitable  
16 purposes if that person, any officer or director of that person's  
17 business, any person with a controlling interest in the business, or  
18 any person the commercial fundraiser employs, engages, or  
19 procures to solicit for compensation, has been convicted by a court  
20 of any state or the United States of a crime arising from the conduct  
21 of a solicitation for a charitable organization or purpose punishable  
22 as a misdemeanor or felony.

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

27 (n) If any provision of this section or the application thereof to  
28 any person or circumstances is held invalid, that invalidity shall  
29 not affect any other provision or application of this section that  
30 can be given effect without the invalid provision or application,  
31 and to this end the provisions of this section are severable.

32 *SEC. 5. Section 12599.1 of the Government Code is amended*  
33 *to read:*

34 12599.1. (a) "Fundraising counsel for charitable purposes" is  
35 defined as any individual, corporation, unincorporated association,  
36 or other legal entity who is described by all of the following:

37 (1) For ~~compensation~~ *compensation, other than as a percentage*  
38 *of the funds, assets, or property received as a result of a solicitation*  
39 *campaign, plans, manages, advises, counsels, consults, or prepares*

1 material for, or with respect to, the solicitation in this state of funds,  
2 assets, or property for charitable purposes.

3 (2) Does not solicit funds, assets, or property for charitable  
4 purposes.

5 (3) Does not receive or control funds, assets, or property  
6 solicited for charitable purposes in this state. *An individual,*  
7 *corporation, unincorporated association, or other legal entity is*  
8 *deemed to receive or control funds, assets, or property if any of*  
9 *the following apply:*

10 (A) *It has the right to approve or veto any payment from an*  
11 *escrow account to which funds received from a solicitation for*  
12 *charitable purposes are subject.*

13 (B) *It maintains an interest in an account into which solicited*  
14 *funds are deposited.*

15 (C) *It has the right to access funds, assets, or property received*  
16 *from a solicitation for charitable purposes and held by a caging*  
17 *company.*

18 (D) *It has any ownership or management interest in any other*  
19 *entity that receives or controls the funds, assets, or property*  
20 *solicited for charitable purposes, including, but not limited to, an*  
21 *escrow agent or caging company, but not including any federally*  
22 *insured financial institution.*

23 (E) *It receives any financial benefit, directly or indirectly, from*  
24 *any other individual or entity that receives or controls the funds,*  
25 *assets, or property solicited for charitable purposes, other than*  
26 *the trustee or charitable corporation soliciting the funds, assets,*  
27 *or property for charitable purposes.*

28 (4) Does not employ, procure, or engage any compensated  
29 person to solicit, receive, or control funds, assets, or property for  
30 charitable purposes.

31 *Any individual, corporation, unincorporated association, or*  
32 *other legal entity who, for compensation, plans, manages, advises,*  
33 *counsels, consults, or prepares material for, or with respect to,*  
34 *the solicitation in this state of funds, assets, or property for*  
35 *charitable purposes, but does not meet the qualifications of a*  
36 *fundraising counsel for charitable purposes in this subdivision,*  
37 *shall be deemed to be a commercial fundraiser for charitable*  
38 *purposes as described in subdivision (a) of Section 12599, unless*  
39 *excluded by that section.*

1     *A commercial fundraiser for charitable purposes shall not*  
2     *include a “trustee” as defined in Section 12582 or 12583, a*  
3     *“charitable corporation” as defined in Section 12582.1, or any*  
4     *employee thereof. A commercial fundraiser for charitable purposes*  
5     *shall not include an individual who is employed by or under the*  
6     *control of a commercial fundraiser for charitable purposes*  
7     *registered with the Attorney General. A commercial fundraiser*  
8     *for charitable purposes shall not include any federally insured*  
9     *financial institution that holds, as a depository, funds received as*  
10    *a result of a solicitation for charitable purposes, or an escrow*  
11    *agent or caging company that receives or controls funds received*  
12    *as a result of a solicitation for charitable purposes. For purposes*  
13    *of this section, a caging company is a business that receives*  
14    *contributions, processes donor mail, and deposits all contributions*  
15    *into an account under the sole control of the charitable*  
16    *organization.*

17    (b) “Fundraising counsel for charitable purposes” does not  
18    include any of the following:

19    (1) An attorney, investment counselor, or banker who in the  
20    conduct of that person’s profession advises a client when actually  
21    engaged in the giving of legal, investment, or financial advice.

22    (2) A trustee as defined in Section 12582 or 12583.

23    (3) A charitable corporation as defined in Section 12582.1, or  
24    any employee thereof.

25    (4) A person employed by or under the control of a fundraising  
26    counsel for charitable purposes, as defined in subdivision (a).

27    (5) A person, corporation, or other legal entity, engaged as an  
28    independent contractor directly by a trustee or a charitable  
29    corporation, that prints, reproduces, or distributes written materials  
30    prepared by a trustee, a charitable corporation, or any employee  
31    thereof, or that performs artistic or graphic services with respect  
32    to written materials prepared by a trustee, a charitable corporation,  
33    or any employee thereof, provided that the independent contractor  
34    does not perform any of the activities described in paragraph (1)  
35    of subdivision (a).

36    (6) A person whose total annual gross compensation for  
37    performing any activity described in paragraph (1) of subdivision  
38    (a) does not exceed twenty-five thousand dollars (\$25,000).

39    (c) A fundraising counsel for charitable purposes shall, prior to  
40    managing, advising, counseling, consulting, or preparing material

1 for, or with respect to, the solicitation in this state of funds, assets,  
2 or property for charitable purposes, register with the Attorney  
3 General's Registry of Charitable Trusts on a registration form  
4 provided by the Attorney General. Renewals of registration shall  
5 be filed with the Registry of Charitable Trusts by January 15 of  
6 each calendar year in which the fundraising counsel for charitable  
7 purposes does business and shall be effective for one year.

8 A registration or renewal fee of two hundred dollars (\$200) shall  
9 be required for registration of a fundraising counsel for charitable  
10 purposes, and shall be payable by certified or cashier's check to  
11 the Attorney General's Registry of Charitable Trusts at the time  
12 of registration and renewal. The Attorney General may adjust the  
13 annual registration or renewal fee, or means of payment, as needed  
14 pursuant to this section. The Attorney General's Registry of  
15 Charitable Trusts may grant extensions of time to file annual  
16 registration as required, pursuant to subdivision (b) of Section  
17 12586.

18 (d) A fundraising counsel for charitable purposes shall file  
19 annually with the Attorney General's Registry of Charitable Trusts  
20 on a form provided by the Attorney General, a report listing each  
21 person, corporation, unincorporated association, or other legal  
22 entity for whom the fundraising counsel has performed any services  
23 described in paragraph (1) of subdivision (a), and a statement  
24 certifying that the fundraising counsel had a written contract with  
25 each listed person, corporation, unincorporated association, or  
26 other legal entity that complied with the requirements of  
27 subdivision (f).

28 (e) Not less than 10 working days prior to the commencement  
29 of the performance of any service for a charitable organization by  
30 a fundraising counsel for charitable purposes, or not later than  
31 commencement of solicitation for solicitations to aid victims of  
32 emergency hardship or disasters, the fundraising counsel shall file  
33 with the Attorney General's Registry of Charitable Trusts a notice  
34 on a form prescribed by the Attorney General that sets forth all of  
35 the following:

36 (1) The name, address, and telephone number of the fundraising  
37 counsel for charitable purposes.

38 (2) The name, address, and telephone number of the charitable  
39 organization with whom the fundraising counsel has contracted.

- 1 (3) The projected dates when performance under the contract
- 2 will commence and terminate.
- 3 (4) The name, address, and telephone number of the person
- 4 responsible for directing and supervising the work of the
- 5 fundraising counsel under the contract.
- 6 (f) There shall be a written contract between a fundraising
- 7 counsel for charitable purposes and a charitable organization for
- 8 each service to be performed by the fundraising counsel for the
- 9 charitable organization, that shall be signed by the authorized
- 10 contracting officer for the fundraising counsel and by an official
- 11 of the charitable organization who is authorized to sign by the
- 12 organization’s governing body. The contract shall be available for
- 13 inspection by the Attorney General and shall contain all of the
- 14 following provisions:
  - 15 (1) The legal name and address of the charitable organization
  - 16 as registered with the Registry of Charitable Trusts unless the
  - 17 charitable organization is exempt from registration.
  - 18 (2) A statement of the charitable purpose for which the
  - 19 solicitation campaign is being conducted.
  - 20 (3) A statement of the respective obligations of the fundraising
  - 21 counsel and the charitable organization.
  - 22 (4) A clear statement of the fees and any other form of
  - 23 compensation, including commissions and property, that will be
  - 24 paid to the fundraising counsel.
  - 25 (5) The effective and termination dates of the contract and the
  - 26 date services will commence with respect to solicitation in this
  - 27 state of contributions for a charitable organization.
  - 28 (6) A statement that the fundraising counsel will not at any time
  - 29 solicit funds, assets, or property for charitable purposes, receive
  - 30 or control funds, assets, or property solicited for charitable
  - 31 purposes, or employ, procure, or engage any compensated person
  - 32 to solicit, receive, or control funds, assets, or property for charitable
  - 33 purposes.
  - 34 (7) A statement that the charitable organization exercises control
  - 35 and approval over the content and frequency of any solicitation.
  - 36 (8) A provision that includes all of the following statements:
    - 37 (A) The charitable organization has the right to cancel the
    - 38 contract without cost, penalty, or liability for a period of 10 days
    - 39 following the date on which the contract is executed.

1 (B) The charitable organization may cancel the contract by  
2 serving a written notice of cancellation on the fundraising counsel.

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

6 (9) A provision that includes all of the following statements:

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

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

13 (C) In the event of termination under this subdivision, the  
14 charitable organization shall be liable for services provided by the  
15 fundraising counsel to the effective date of the termination.

16 (10) Any other information required by the regulations of the  
17 Attorney General.

18 (g) It shall be unlawful for any fundraising counsel for charitable  
19 purposes to manage, advise, counsel, consult, or prepare material  
20 for, or with respect to, the solicitation in this state of funds, assets,  
21 or property for charitable purposes unless the fundraising counsel  
22 for charitable purposes has complied with the registration or annual  
23 renewal and financial reporting requirements of this article.

24 (h) A fundraising counsel for charitable purposes is subject to  
25 the Attorney General's supervision and enforcement to the same  
26 extent as a trustee for charitable purposes under this article.

27 (i) If any provision of this section or the application thereof to  
28 any person or circumstances is held invalid, that invalidity shall  
29 not affect other provisions or application of this section which can  
30 be given effect without the invalid provision or application, and  
31 to this end the provisions of this section are severable.