

AMENDED IN ASSEMBLY APRIL 21, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2077**

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**Introduced by Assembly Member Allen**

February 20, 2014

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An act to amend Section ~~12599~~ of the Government Code, relating to ~~charitable solicitations~~; 12587.1 of the Government Code, relating to *charitable organizations*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2077, as amended, Allen. ~~Charitable solicitations; commercial fundraisers; organizations; enforcement.~~

*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. That act requires those legal entities to register, and file specified reports, with the Attorney General's Registry of Charitable Trusts, as provided.*

*The act establishes the Registry of Charitable Trusts Fund in the State Treasury, which is administered by the Department of Justice. The act requires, among other specified fees, all registration fees paid to the Department of Justice pursuant to the act to be deposited in the fund, and requires those moneys to be used by the Attorney General, upon appropriation by the Legislature, among other specified purposes, to*

*operate and maintain the Attorney General’s Registry of Charitable Trusts.*

*This bill would additionally require moneys in the fund, upon appropriation by the Legislature, to be used by the Attorney General to enforce the registration and reporting provisions of the act.*

~~The Supervision of Trustees and Fundraisers for Charitable Purposes Act requires a commercial fundraiser for charitable purposes, prior to soliciting any funds, assets, or property in California for charitable purposes, or prior to receiving and controlling any funds, assets, or property as a result of a solicitation in this state for charitable purposes, register with the Attorney General’s Registry of Charitable Trusts. That act also requires a commercial fundraiser for charitable purposes to file with the Attorney General’s Registry of Charitable Trusts a notice that sets forth specified information not less than 10 working days prior to the commencement of each solicitation campaign, event, or service.~~

~~This bill would instead require a commercial fundraiser for charitable purposes to file with the Attorney General’s Registry of Charitable Trusts that notice not less than 15 working days prior to the commencement of each solicitation campaign, event, or service.~~

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

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

- 1     SECTION 1. Section 12587.1 of the Government Code is
- 2     amended to read:
- 3     12587.1. (a) The Registry of Charitable Trusts Fund is hereby
- 4     established in the State Treasury, to be administered by the
- 5     Department of Justice.
- 6     (b) Notwithstanding any other provision of law, all registration
- 7     fees, registration renewal fees, and late fees or other fees paid to
- 8     the Department of Justice pursuant to this article, Section 2850 of
- 9     the Probate Code, or Section 320.5 of the Penal Code, shall be
- 10    deposited in the Registry of Charitable Trusts Fund.
- 11    (c) Moneys in the fund, upon appropriation by the Legislature,
- 12    shall be used by the Attorney General ~~solely~~ to operate and
- 13    maintain the Attorney General’s Registry of Charitable Trusts and
- 14    Registry of Conservators, Guardians, and Trustees, and provide
- 15    public access via the Internet to reports filed with the Attorney
- 16    General.

1 (d) Moneys in the fund, upon appropriation by the Legislature,  
2 shall be used by the Attorney General to enforce the registration  
3 and reporting provisions.

4 SECTION 1. ~~Section 12599 of the Government Code is~~  
5 ~~amended to read:~~

6 12599. (a) “Commercial fundraiser for charitable purposes”  
7 means any individual, corporation, unincorporated association, or  
8 other legal entity who for compensation does any of the following:

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

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

14 (3) Employs, procures, or engages any compensated person to  
15 solicit, receive, or control funds, assets, or property for charitable  
16 purposes.

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

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

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

1     ~~(b) A commercial fundraiser for charitable purposes shall, prior~~  
2 ~~to soliciting any funds, assets, or property, including salvageable~~  
3 ~~personal property, in California for charitable purposes, or prior~~  
4 ~~to receiving and controlling any funds, assets, or property,~~  
5 ~~including salvageable personal property, as a result of a solicitation~~  
6 ~~in this state for charitable purposes, register with the Attorney~~  
7 ~~General's Registry of Charitable Trusts on a registration form~~  
8 ~~provided by the Attorney General. Renewals of registration shall~~  
9 ~~be filed with the Registry of Charitable Trusts by January 15 of~~  
10 ~~each calendar year in which the commercial fundraiser for~~  
11 ~~charitable purposes does business and shall be effective for one~~  
12 ~~year. A registration or renewal fee of two hundred dollars (\$200)~~  
13 ~~shall be required for registration of a commercial fundraiser for~~  
14 ~~charitable purposes, and shall be payable by certified or cashier's~~  
15 ~~check to the Attorney General's Registry of Charitable Trusts at~~  
16 ~~the time of registration or renewal. The Attorney General may~~  
17 ~~adjust the annual registration or renewal fee, or means of payment,~~  
18 ~~as needed pursuant to this section. The Attorney General's Registry~~  
19 ~~of Charitable Trusts may grant extensions of time to file annual~~  
20 ~~registration as required, pursuant to subdivision (b) of Section~~  
21 ~~12586. No separate fee shall be charged by the Attorney General~~  
22 ~~for electronic registration, electronic renewal, or electronic~~  
23 ~~repayment of fees.~~

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

32     ~~(d) The contents of the forms for annual registration and annual~~  
33 ~~financial reporting by commercial fundraisers for charitable~~  
34 ~~purposes shall be established by the Attorney General in a manner~~  
35 ~~consistent with the procedures set forth in subdivisions (a) and (b)~~  
36 ~~of Section 12586. The annual financial report shall require a~~  
37 ~~detailed, itemized accounting of funds, assets, or property, solicited~~  
38 ~~for charitable purposes on behalf of each charitable organization~~  
39 ~~exempt from taxation under Section 501(c)(3) of the Internal~~  
40 ~~Revenue Code or for each charitable purpose during the accounting~~

1 period, and shall include, among other data, the following  
2 information for funds, assets, or property, solicited by the  
3 commercial fundraiser for charitable purposes:

4 (1) Total revenue.

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

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

9 (4) Fundraising expenses.

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

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

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

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

34 (g) A commercial fundraiser for charitable purposes is a  
35 constructive trustee for charitable purposes as to all funds collected  
36 pursuant to solicitation for charitable purposes and shall account  
37 to the Attorney General for all funds. A commercial fundraiser for  
38 charitable purposes is subject to the Attorney General's supervision  
39 and enforcement over charitable funds and assets to the same extent  
40 as a trustee for charitable purposes under this article.

1     ~~(h) Not less than 15 working days prior to the commencement~~  
2     ~~of each solicitation campaign, event, or service, or not later than~~  
3     ~~commencement of solicitation for solicitations to aid victims of~~  
4     ~~emergency hardship or disasters, a commercial fundraiser for~~  
5     ~~charitable purposes shall file with the Attorney General's Registry~~  
6     ~~of Charitable Trusts a notice on a form prescribed by the Attorney~~  
7     ~~General that sets forth all of the following:~~

8     ~~(1) The name, address, and telephone number of the commercial~~  
9     ~~fundraiser for charitable purposes.~~

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

12    ~~(3) The fundraising methods to be used.~~

13    ~~(4) The projected dates when performance under the contract~~  
14    ~~will commence and terminate.~~

15    ~~(5) The name, address, and telephone number of the person~~  
16    ~~responsible for directing and supervising the work of the~~  
17    ~~commercial fundraiser under the contract.~~

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

26    ~~(1) The legal name and address of the charitable organization~~  
27    ~~as registered with the Registry of Charitable Trusts, unless the~~  
28    ~~charitable organization is exempt from registration.~~

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

31    ~~(3) A statement of the respective obligations of the commercial~~  
32    ~~fundraiser and the charitable organization.~~

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

1     ~~(5) If a percentage fee is to be paid to the commercial fundraiser,~~  
2     ~~a statement of the percentage of the total contributions received~~  
3     ~~that will be remitted to or retained by the charitable organization,~~  
4     ~~or, if the solicitation involves the sale of goods or services or the~~  
5     ~~sale of admissions to a fundraising event, the percentage of the~~  
6     ~~purchase price that will be remitted to the charitable organization.~~  
7     ~~The stated percentage shall be calculated by subtracting from~~  
8     ~~contributions received and sales receipts not only the commercial~~  
9     ~~fundraiser's fee, but also any additional amounts that the charitable~~  
10    ~~organization is obligated to pay as fundraising costs.~~

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

13    ~~(7) A provision that requires that each contribution in the control~~  
14    ~~or custody of the commercial fundraiser shall in its entirety and~~  
15    ~~within five working days of its receipt comply with either of the~~  
16    ~~following:~~

17    ~~(A) Be deposited in an account at a bank or other federally~~  
18    ~~insured financial institution that is solely in the name of the~~  
19    ~~charitable organization and over which the charitable organization~~  
20    ~~has sole control of withdrawals:~~

21    ~~(B) Be delivered to the charitable organization in person, by~~  
22    ~~United States express mail, or by another method of delivery~~  
23    ~~providing for overnight delivery.~~

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

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

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

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

1 ~~(B) The charitable organization may cancel the contract by~~  
2 ~~3 serving a written notice of cancellation on the commercial~~  
4 ~~5 fundraiser.~~

6 ~~(C) If mailed, service shall be by certified mail, return receipt~~  
7 ~~8 requested, and cancellation shall be deemed effective upon the~~  
9 ~~10 expiration of five calendar days from the date of mailing.~~

11 ~~(D) Any funds collected after effective notice that the contract~~  
12 ~~13 has been canceled shall be deemed to be held in trust for the benefit~~  
14 ~~15 of the charitable organization without deduction for costs or~~  
16 ~~16 expenses of any nature.~~

17 ~~(E) The charitable organization shall be entitled to recover all~~  
18 ~~19 funds collected after the date of cancellation.~~

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

21 ~~(A) Following the initial 10-day cancellation period, the~~  
22 ~~23 charitable organization may terminate the contract by giving 30~~  
24 ~~24 days' written notice.~~

25 ~~(B) If mailed, service of the notice shall be by certified mail,~~  
26 ~~27 return receipt requested, and shall be deemed effective upon the~~  
28 ~~28 expiration of five calendar days from the date of mailing.~~

29 ~~(C) In the event of termination under this subdivision, the~~  
30 ~~31 charitable organization shall be liable for services provided by the~~  
32 ~~32 commercial fundraiser up to 30 days after the effective service of~~  
33 ~~33 the notice.~~

34 ~~(12) A provision that, following the initial 10-day cancellation~~  
35 ~~35 period, the charitable organization may terminate the contract at~~  
36 ~~36 any time upon written notice, without payment or compensation~~  
37 ~~37 of any kind to the commercial fundraiser, if the commercial~~  
38 ~~38 fundraiser or its agents, employees, or representatives do any of~~  
39 ~~39 the following:~~

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

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

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

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

1 (j) It shall be unlawful for a commercial fundraiser for charitable  
2 purposes to not disclose the percentage of total fundraising  
3 expenses of the fundraiser upon receiving a written or oral request  
4 from a person solicited for a contribution for a charitable purpose.  
5 “Percentage of total fundraising expenses,” as used in this section,  
6 means the ratio of the total expenses of the fundraiser to the total  
7 revenue received by the fundraiser for the charitable purpose for  
8 which funds are being solicited, as reported on the most recent  
9 financial report filed with the Attorney General’s Registry of  
10 Charitable Trusts. A commercial fundraiser shall disclose this  
11 information in writing within five working days from receipt of a  
12 request by mail or facsimile. A commercial fundraiser shall orally  
13 disclose this information immediately upon a request made in  
14 person or in a telephone conversation and shall follow this response  
15 with a written disclosure within five working days. Failure to  
16 comply with the requirements of this subdivision shall be grounds  
17 for an injunction against solicitation in this state for charitable  
18 purposes and other civil remedies provided by law.

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

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

39 (m) A commercial fundraiser for charitable purposes shall not  
40 solicit in the state on behalf of a charitable organization unless that

1 charitable organization is registered or is exempt from registration  
2 with the Attorney General's Registry of Charitable Trusts.  
3 (n) ~~If any provision of this section or the application thereof to~~  
4 ~~any person or circumstances is held invalid, that invalidity shall~~  
5 ~~not affect any other provision or application of this section that~~  
6 ~~can be given effect without the invalid provision or application,~~  
7 ~~and to this end the provisions of this section are severable.~~