

**Introduced by Senator Sher**

February 25, 2000

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An act to amend Section 12598 of, and to add Sections 12586.1, 12586.2, 12591.1, and 12591.2 to, the Government Code, relating to charitable fundraising.

LEGISLATIVE COUNSEL'S DIGEST

SB 2015, as introduced, Sher. Charitable fundraising.

(1) Under the Supervision of Trustees and Fundraisers for Charitable Purposes Act, charitable corporations or trustees, commercial fundraisers, fundraising counsel, or coventurers who hold or solicit property for charitable purposes are required to file a registration statement and an annual financial report with the Attorney General. The act also authorizes the Attorney General to make any additional rules and regulations that may be necessary for the administration of the act.

This bill would, in addition to all other powers and duties under common law and statutory law, authorize the Attorney General to decide matters relating to the issuance, renewal, suspension, or revocation of registrations, and take appropriate action to initiate any civil or criminal proceedings necessary to enforce the act. The bill would also authorize a late fee for the failure to register, complete an annual report, or correct deficiencies in a registration or an annual report, as specified.

The bill would also make it a misdemeanor for any person to violate the act with intent to deceive or defraud any charity or individual. It would authorize the Attorney General to

accept an assurance of voluntary compliance through which any person alleged to be engaged in any method act, or practice in violation of the act agrees to discontinue that method, act, or practice. Because the bill would create new crimes, it would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 12586.1 is added to the  
2 Government Code, to read:

3 12586.1. In addition to a registration fee, a charitable  
4 corporation or trustee, commercial fundraiser,  
5 fundraising counsel, or coventurer may be assessed a late  
6 fee or an additional fee of twenty-five dollars (\$25) for  
7 each month or part of the month after the date on which  
8 the registration statement and financial report were due  
9 to be filed or after the period of extension granted for the  
10 filing if the charitable corporation or trustee, commercial  
11 fundraiser, fundraising counsel, or coventurer does any of  
12 the following:

13 (a) Exists and operates in California without being  
14 registered.

15 (b) Solicits contributions in California without being  
16 registered.

17 (c) Fails to file its complete annual report within 135  
18 days following the close of the fiscal year and has not  
19 requested an extension of time to file the annual report.

20 (d) Fails to file its complete annual report within the  
21 time granted for an extension to file the annual report.

22 (e) Fails to correct the deficiencies in its registration  
23 or annual report within 10 days of receipt of written  
24 notice of those deficiencies.



1 SEC. 2. Section 12586.2 is added to the Government  
2 Code, to read:

3 12586.2. All fines, penalties, attorney's fees, and costs  
4 of investigation paid to the Attorney General pursuant to  
5 this article shall be used by the Department of Justice  
6 solely for the administration and enforcement of this  
7 article, upon appropriation by the Legislature.

8 SEC. 3. Section 12591.1 is added to the Government  
9 Code, to read:

10 12591.1. (a) Any person who willfully and knowingly  
11 violates any provision of this article with intent to deceive  
12 or defraud any charity or individual is guilty of a  
13 misdemeanor and shall be punished by a fine not  
14 exceeding ten thousand dollars (\$10,000) or  
15 imprisonment as provided by law, or both.

16 (b) Any other violation of this article shall constitute  
17 a misdemeanor punishable by a fine not exceeding two  
18 thousand five hundred dollars (\$2,500) or imprisonment  
19 as provided by law, or both.

20 (c) Any offense committed under this article  
21 involving a solicitation may be deemed to have been  
22 committed at either the place at which the solicitation  
23 was initiated or at the place where the solicitation was  
24 received.

25 SEC. 4. Section 12591.2 is added to the Government  
26 Code, to read:

27 12591.2. In any case where the Attorney General has  
28 authority to institute an action or proceeding under this  
29 article, he or she may accept an assurance of voluntary  
30 compliance through which any person alleged to be  
31 engaged in any method, act, or practice in violation of this  
32 article agrees to discontinue that method, act, or practice.  
33 The assurance may, among other terms, include a  
34 stipulation of a voluntary payment by the person of the  
35 cost of the investigation or of an amount to be held in  
36 escrow pending the outcome of an action or as restitution  
37 to aggrieved persons, or both. Any such assurance of  
38 compliance shall be in writing and shall be filed with a  
39 superior court in this state. Matters closed may at any  
40 time be reopened by the court for further proceedings in



1 the public interest. In the event of an alleged violation,  
2 the Attorney General may, at his or her discretion, either  
3 initiate contempt proceedings or proceed as if the  
4 assurance of voluntary compliance has not been  
5 accepted. Evidence of a violation of the assurance shall be  
6 prima facie evidence of a violation of this article in any  
7 subsequent proceeding brought by the Attorney  
8 General.

9 SEC. 5. Section 12598 of the Government Code is  
10 amended to read:

11 12598. (a) The primary responsibility for supervising  
12 charitable trusts in California, for insuring compliance  
13 with trusts and articles of incorporation, and for  
14 protection of assets held by charitable trusts and public  
15 benefit corporations, resides in the Attorney General.  
16 The Attorney General has broad powers under common  
17 law and California statutory law to carry out these  
18 charitable trust enforcement responsibilities. These  
19 powers include, but are not limited to, charitable trust  
20 enforcement actions under all of the following:

21 (1) This article.

22 (2) Title 8 (commencing with Section 2223) of Part 4  
23 of Division 3 of the Civil Code.

24 (3) Division 2 (commencing with Section 5000) of  
25 Title 1 of the Corporations Code.

26 (4) Sections 8111, 11703, 15004, 15409, 15680 to 15685,  
27 16060 to 16062, 16064, and 17200 to 17210, inclusive, of the  
28 Probate Code.

29 (5) Chapter 5 (commencing with Section 17200) of  
30 Part 2 of Division 7 of the Business and Professions Code,  
31 and Sections 17500 and 17535 of the Business and  
32 Professions Code.

33 (6) Sections 319, 326.5, and 532d of the Penal Code.

34 (b) The Attorney General shall be entitled to recover  
35 from defendants named in a charitable trust enforcement  
36 action all actual costs incurred in conducting that action,  
37 including the costs of auditors, consultants, and experts  
38 employed or retained to assist with the investigation,  
39 preparation, and presentation in court of the charitable  
40 trust enforcement action.



1 (c) Costs shall be recovered by the Attorney General  
2 pursuant to court order. At the time of entering judgment  
3 or approving settlement of a charitable trust  
4 enforcement action, as defined in subdivision (a), the  
5 court shall make findings on whether the Attorney  
6 General's action has resulted in pecuniary benefits or  
7 corrected a breach of trust for any charitable  
8 organization, or charitable purpose. If the court finds in  
9 the affirmative, the court shall award recovery of costs in  
10 the charitable trust enforcement action to the Attorney  
11 General and shall order that costs be paid by the  
12 charitable organization and the individuals named as  
13 defendants in or otherwise subject to the action, in a  
14 manner that the court finds to be equitable and fair. The  
15 court shall not award costs pursuant to this subdivision  
16 which exceed one-third of the pecuniary benefit to any  
17 charitable organization or charitable purpose realized by  
18 the Attorney General's action.

19 (d) All moneys received by the Department of Justice  
20 pursuant to this section shall be deposited into the  
21 General Fund and shall be used to offset the costs of  
22 future charitable trust enforcement actions by the  
23 Attorney General.

24 (e) Upon a finding by the court that a lawsuit filed by  
25 the Attorney General was frivolous or brought in bad  
26 faith, the court may award the defendant charity the costs  
27 of that action.

28 (f) *In addition to all other powers and duties under  
29 common law and statutory law, the Attorney General  
30 may do any of the following:*

31 (1) *Decide matters relating to the issuance, renewal,  
32 suspension, or revocation of registrations.*

33 (2) *Take appropriate action to initiate any civil or  
34 criminal proceedings necessary to enforce this article.*

35 (3) *Exercise all other authority accorded to him or her  
36 by this article.*

37 SEC. 6. No reimbursement is required by this act  
38 pursuant to Section 6 of Article XIII B of the California  
39 Constitution because the only costs that may be incurred  
40 by a local agency or school district will be incurred



1 because this act creates a new crime or infraction,  
2 eliminates a crime or infraction, or changes the penalty  
3 for a crime or infraction, within the meaning of Section  
4 17556 of the Government Code, or changes the definition  
5 of a crime within the meaning of Section 6 of Article  
6 XIII B of the California Constitution.

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