

ASSEMBLY BILL NO. 60—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2012

Referred to Committee on Judiciary

SUMMARY—Establishes requirements for solicitation of charitable contributions by nonprofit corporations and other charitable organizations. (BDR 7-217)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to charities; requiring nonprofit corporations to file certain information with the Secretary of State before soliciting charitable contributions in this State; requiring the Secretary of State to provide to the public certain information concerning nonprofit corporations that solicit charitable contributions in this State; requiring the disclosure of certain information by a person conducting a solicitation for charitable contributions for or on behalf of a nonprofit corporation or other charitable organization; authorizing the imposition of penalties; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law regulates the activities of nonprofit corporations within the State. (Chapter 82 of NRS)

**Section 3** of this bill requires every nonprofit corporation that intends to solicit tax-deductible charitable contributions in this State to file certain information and a financial report with the Secretary of State at the time the corporation files its articles of incorporation and its annual list. **Section 3** authorizes the financial report to be a copy of the nonprofit corporation's Form 990 IRS filing for the most recent fiscal year. **Section 5** of this bill provides that if a nonprofit corporation fails to file the information and financial statement with its annual list, the nonprofit corporation is required to pay the \$50 penalty for a default in the requirement for filing an annual list. **Section 5** further authorizes the Secretary of State to issue a cease and desist order if the nonprofit corporation fails to file the information and financial statement and pay the penalty for default within 90 days after notice of the



default. If the nonprofit corporation fails to comply with the cease and desist order, **section 5** authorizes the Secretary of State to: (1) forfeit the right of the nonprofit corporation to transact business in this State; and (2) refer the matter to the Attorney General for a determination of whether to institute the appropriate proceedings in a court of competent jurisdiction. **Section 4** of this bill requires the Secretary of State to publish certain information provided by the nonprofit corporation on the Secretary of State's Internet website.

**Section 6.5** of this bill requires the Secretary of State to provide written notice to a person who is alleged to have violated certain provisions of law governing the solicitation of charitable contributions if the Secretary of State believes such a violation has occurred. **Section 6.5** further authorizes the Secretary of State to refer a violation of certain provisions of law governing the solicitation of charitable contributions to the Attorney General for a determination of whether to institute the appropriate proceedings in a court of competent jurisdiction. Under **section 6.5**, in such a proceeding, the Attorney General may seek an injunction or other equitable relief and a civil penalty of not more than \$1,000. If the Attorney General prevails in the proceeding, the Attorney General is entitled to recover the costs of the proceeding, including, without limitation, investigation costs and reasonable attorney's fees.

Existing law prohibits a person soliciting contributions for or on behalf of a charitable organization from making a false, deceiving or misleading claim or representation. (NRS 598.1305) **Section 12** of this bill requires a person representing that he or she is soliciting contributions for or on behalf of a charitable organization or nonprofit corporation to disclose: (1) the name of the charitable organization or nonprofit corporation as registered with the Secretary of State; (2) the state or jurisdiction in which the charitable organization or nonprofit corporation is formed; (3) the purpose of the charitable organization or nonprofit corporation; and (4) certain information relating to whether the contribution or donation is tax deductible pursuant to section 170(c) of the Internal Revenue Code. Under **section 12**, the failure to make this disclosure is a deceptive trade practice.

---

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 82 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this act.

**Sec. 2.** *As used in sections 2 to 9, inclusive, of this act, unless the context otherwise requires, "charitable contribution" means a contribution that is recognized as a tax deductible contribution pursuant to the provisions of section 170(c) of the Internal Revenue Code of 1986, 26 U.S.C. § 170(c), future amendments to that section and the corresponding provisions of future internal revenue laws.*

**Sec. 2.5.** *The provisions of sections 2 to 9, inclusive, of this act do not apply to a corporation that is a unit or instrumentality of the United States government.*

**Sec. 3. 1.** *Except as otherwise provided in section 2.5 of this act, a corporation shall not solicit charitable contributions in this State by any means, or have charitable contributions solicited*



1 *in this State on its behalf by another person or entity, unless the*  
2 *corporation is registered with the Secretary of State pursuant to*  
3 *this section. Each chapter, branch or affiliate of a corporation*  
4 *may register separately.*

5 *2. A corporation which intends to solicit charitable*  
6 *contributions must, at the time of filing its articles of*  
7 *incorporation pursuant to NRS 82.081, file on a form prescribed*  
8 *by the Secretary of State:*

9 *(a) The information required by subsection 3; and*

10 *(b) A financial report.*

11 *3. The form required by subsection 2 must include, without*  
12 *limitation:*

13 *(a) The exact name of the corporation as registered with the*  
14 *Internal Revenue Service;*

15 *(b) The federal tax identification number of the corporation;*

16 *(c) The name of the corporation as registered with the*  
17 *Secretary of State or, if a foreign nonprofit corporation, the name*  
18 *of the foreign nonprofit corporation as filed in its jurisdiction of*  
19 *origin;*

20 *(d) The purpose for which the corporation is organized;*

21 *(e) The name or names under which the corporation intends to*  
22 *solicit charitable contributions;*

23 *(f) The address and telephone number of the principal place of*  
24 *business of the corporation and the address and telephone number*  
25 *of any offices of the corporation in this State or, if the corporation*  
26 *does not maintain an office in this State, the name, address and*  
27 *telephone number of the custodian of the financial records of the*  
28 *corporation;*

29 *(g) The names and addresses, either residence or business, of*  
30 *the officers, directors, trustees and executive personnel of the*  
31 *corporation;*

32 *(h) The last day of the fiscal year of the corporation;*

33 *(i) The jurisdiction and date of the formation of the*  
34 *corporation;*

35 *(j) The tax exempt status of the corporation; and*

36 *(k) Any other information deemed necessary by the Secretary*  
37 *of State, as prescribed by regulations adopted by the Secretary of*  
38 *State pursuant to section 9 of this act.*

39 *4. Except as otherwise provided in this subsection, a financial*  
40 *report must contain the financial information of the corporation*  
41 *for the most recent fiscal year. In the discretion of the Secretary of*  
42 *State, the financial report may be a copy of the Form 990 of the*  
43 *corporation, with all schedules except the schedules of donors, for*  
44 *the most recent fiscal year. If a corporation was first formed*  
45 *within the past year and does not have any financial information*



1 or a Form 990 for its most recent fiscal year, the corporation must  
2 complete the financial report using good faith estimates for its  
3 current fiscal year on a form prescribed by the Secretary of State.

4 5. A corporation which intends to solicit charitable  
5 contributions in this State must, at the time the corporation files  
6 the annual list required by subsection 3 of NRS 82.193, file with  
7 the Secretary of State:

8 (a) If the purpose for which the corporation is organized has  
9 changed, a statement of that purpose.

10 (b) A new financial report pursuant to subsection 4.

11 6. All information filed pursuant to this section are public  
12 records. The filing of information pursuant to this section is not  
13 an endorsement of any corporation by the Secretary of State or the  
14 State of Nevada.

15 7. As used in this section:

16 (a) "Form 990" means the Return of Organization Exempt  
17 from Income Tax (Form 990) of the Internal Revenue Service of  
18 the United States Department of the Treasury, or any equivalent  
19 or successor form of the Internal Revenue Service of the United  
20 States Department of the Treasury.

21 (b) "Solicit charitable contributions" means to request a  
22 contribution, donation, gift or the like that is made by any means,  
23 including, without limitation:

24 (1) Mail;

25 (2) Commercial carrier;

26 (3) Telephone, facsimile, electronic mail or other electronic  
27 device; or

28 (4) A face-to-face meeting.

29 ➔ The term includes requests for contributions, donations, gifts or  
30 the like which are made from a location within this State and  
31 solicitations which are made from a location outside of this State  
32 to persons located in this State, but does not include a request for  
33 contributions, donations, gifts or the like which is directed only to  
34 a total of fewer than 15 persons or only to persons who are related  
35 within the third degree of consanguinity or affinity to the officers,  
36 directors, trustees or executive personnel of the corporation.

37 Sec. 4. The Secretary of State shall make available to the  
38 public and post on the official Internet website of the Secretary of  
39 State the information provided by each corporation pursuant to  
40 section 3 of this act.

41 Sec. 5. 1. If the Secretary of State finds that a corporation  
42 required to file information pursuant to subsection 5 of section 3  
43 of this act is soliciting charitable contributions in this State, or is  
44 having charitable contributions solicited in this State on its behalf  
45 by another person or entity, without filing the information



\* A B 6 0 R 1 \*

1 *required by subsection 5 of section 3 of this act on or before the*  
2 *due date for the filing, the Secretary of State shall impose on the*  
3 *corporation the penalty for default set forth in subsection 3 of*  
4 *NRS 82.193 and notify the corporation of the violation by*  
5 *providing written notice to its registered agent. The written notice:*

6 *(a) Must include a statement indicating that the corporation is*  
7 *required to file the information required by subsection 5 of section*  
8 *3 of this act and pay the penalty for default set forth in subsection*  
9 *3 of NRS 82.193.*

10 *(b) May be provided electronically.*

11 *2. Not later than 90 days after receiving notice from the*  
12 *Secretary of State pursuant to subsection 1, the corporation must*  
13 *file the information required by subsection 5 of section 3 of this*  
14 *act and pay the penalty for default set forth in subsection 3 of NRS*  
15 *82.193. If the corporation fails to file the information required by*  
16 *subsection 5 of section 3 of this act and pay the penalty for default*  
17 *set forth in subsection 3 of NRS 82.193 within 90 days after*  
18 *receiving the notice, the Secretary of State may, in addition to*  
19 *imposing the penalty for default set forth in subsection 3 of NRS*  
20 *82.193, take any or all of the following actions:*

21 *(a) Impose a civil penalty of not more than \$1,000.*

22 *(b) Issue an order to cease and desist soliciting charitable*  
23 *contributions or having charitable contributions solicited on*  
24 *behalf of the corporation by another person or entity.*

25 *3. An action taken pursuant to subsection 2 is a final decision*  
26 *for the purposes of judicial review pursuant to chapter 233B of*  
27 *NRS.*

28 *4. If a corporation fails to pay a civil penalty imposed by the*  
29 *Secretary of State pursuant to subsection 2 or comply with an*  
30 *order to cease and desist issued by the Secretary of State pursuant*  
31 *to subsection 2, the Secretary of State may:*

32 *(a) If the corporation is organized pursuant to this chapter,*  
33 *revoke the charter of the corporation. If the charter of the*  
34 *corporation is revoked pursuant to this paragraph, the corporation*  
35 *forfeits its right to transact business in this State.*

36 *(b) If the corporation is a foreign nonprofit corporation, forfeit*  
37 *the right of the foreign nonprofit corporation to transact business*  
38 *in this State.*

39 *(c) Refer the matter to the Attorney General for a*  
40 *determination of whether to institute proceedings pursuant to*  
41 *section 6.5 of this act.*

42 **Sec. 6.** (Deleted by amendment.)

43 **Sec. 6.5.** *1. If the Secretary of State believes that a person*  
44 *has violated NRS 598.1305 or sections 2 to 9, inclusive, of this act,*  
45 *or any other provision of the laws of this State governing the*



\* A B 6 0 R 1 \*

1 *solicitation of charitable contributions, the Secretary of State shall*  
2 *notify the person in writing of the alleged violation.*

3 2. *The Secretary of State may refer an alleged violation of*  
4 *NRS 598.1305 or sections 2 to 9, inclusive, of this act, or any other*  
5 *provision of the laws of this State governing the solicitation of*  
6 *charitable contributions to the Attorney General for a*  
7 *determination of whether to institute proceedings in a court of*  
8 *competent jurisdiction to enforce NRS 598.1305 or sections 2 to 9,*  
9 *inclusive, of this act, or any other provision of the laws of this*  
10 *State governing the solicitation of charitable contributions. The*  
11 *Attorney General may institute and prosecute the appropriate*  
12 *proceedings to enforce NRS 598.1305 or sections 2 to 9, inclusive,*  
13 *of this act, or any other provision of the laws of this State*  
14 *governing the solicitation of charitable contributions.*

15 3. *In a proceeding instituted by the Attorney General*  
16 *pursuant to subsection 2, the Attorney General may seek an*  
17 *injunction or other equitable relief, and may recover a civil*  
18 *penalty of not more than \$1,000 for each violation. If the Attorney*  
19 *General prevails in such a proceeding, the Attorney General is*  
20 *entitled to recover the costs of the proceeding, including, without*  
21 *limitation, the cost of any investigation and reasonable attorney's*  
22 *fees.*

23 **Sec. 7.** *The powers and duties of the Secretary of State and*  
24 *the Attorney General pursuant to sections 2 to 9, inclusive, of this*  
25 *act are in addition to other powers and duties of the Secretary of*  
26 *State and Attorney General with respect to corporations and*  
27 *charitable contributions.*

28 **Sec. 8.** (Deleted by amendment.)

29 **Sec. 9.** *The Secretary of State may adopt regulations to*  
30 *administer the provisions of sections 2 to 9, inclusive, of this act.*

31 **Sec. 10.** NRS 82.131 is hereby amended to read as follows:

32 82.131 Subject to such limitations, if any, as may be contained  
33 in its articles, *and except as otherwise provided in section 3 of this*  
34 *act,* every corporation may:

35 1. Borrow money and contract debts when necessary for the  
36 transaction of its business, or for the exercise of its corporate rights,  
37 privileges or franchises, or for any other lawful purpose of its  
38 incorporation, issue bonds, promissory notes, drafts, debentures and  
39 other obligations and evidences of indebtedness, payable at a  
40 specified time or times, or payable upon the happening of a  
41 specified event or events, whether secured by mortgage, pledge or  
42 other security, or unsecured, for money borrowed, or in payment for  
43 property purchased or acquired, or for any other lawful object.

44 2. Guarantee, purchase, hold, take, obtain, receive, subscribe  
45 for, own, use, dispose of, sell, exchange, lease, lend, assign,



- 1 mortgage, pledge or otherwise acquire, transfer or deal in or with
- 2 bonds or obligations of, or shares, securities or interests in or issued
- 3 by any person, government, governmental agency or political
- 4 subdivision of government, and exercise all the rights, powers and
- 5 privileges of ownership of such an interest, including the right to
- 6 vote, if any.
- 7 3. Issue certificates evidencing membership and issue identity
- 8 cards.
- 9 4. Make donations for the public welfare or for community
- 10 funds, hospital, charitable, educational, scientific, civil, religious or
- 11 similar purposes.
- 12 5. Levy dues, assessments and fees.
- 13 6. Purchase, take, receive, lease, take by gift, devise or bequest,
- 14 or otherwise acquire, own, improve, use and otherwise deal in and
- 15 with real or personal property, or any interest therein, wherever
- 16 situated.
- 17 7. Carry on a business for profit and apply any profit that
- 18 results from the business to any activity in which it may lawfully
- 19 engage.
- 20 8. Participate with others in any partnership, joint venture or
- 21 other association, transaction or arrangement of any kind, whether
- 22 or not participation involves sharing or delegation of control with or
- 23 to others.
- 24 9. Act as trustee under any trust incidental to the principal
- 25 objects of the corporation, and receive, hold, administer, exchange
- 26 and expend funds and property subject to the trust.
- 27 10. Pay reasonable compensation to officers, directors and
- 28 employees, pay pensions, retirement allowances and compensation
- 29 for past services, and establish incentive or benefit plans, trusts and
- 30 provisions for the benefit of its officers, directors, employees, agents
- 31 and their families, dependents and beneficiaries, and indemnify and
- 32 buy insurance for a fiduciary of such a benefit or incentive plan,
- 33 trust or provision.
- 34 11. Have one or more offices, and hold, purchase, mortgage
- 35 and convey real and personal property in this State, and in any of the
- 36 several states, territories, possessions and dependencies of the
- 37 United States, the District of Columbia and any foreign countries.
- 38 12. Do everything necessary and proper for the
- 39 accomplishment of the objects enumerated in its articles of
- 40 incorporation, or necessary or incidental to the protection and
- 41 benefit of the corporation, and, in general, to carry on any lawful
- 42 business necessary or incidental to the attainment of the objects of
- 43 the corporation, whether or not the business is similar in nature to
- 44 the objects set forth in the articles of incorporation of the
- 45 corporation, except that:



\* A B 6 0 R 1 \*

(a) A corporation does not, by any implication or construction, possess the power of issuing bills, notes or other evidences of debt for circulation of money; and

(b) This chapter does not authorize the formation of banking corporations to issue or circulate money or currency within this State, or outside of this State, or at all, except the federal currency, or the notes of banks authorized under the laws of the United States.

**Sec. 11.** NRS 82.5231 is hereby amended to read as follows:

82.5231 ~~HH~~ *Except as otherwise provided in section 3 of this act, if* a foreign nonprofit corporation has filed the initial or annual list in compliance with NRS 82.523 and has paid the appropriate fee for the filing, the cancelled check or other proof of payment received by the foreign nonprofit corporation constitutes a certificate authorizing it to transact its business within this State until the last day of the month in which the anniversary of its qualification to transact business occurs in the next succeeding calendar year.

**Sec. 12.** NRS 598.1305 is hereby amended to read as follows:

598.1305 1. *A person representing that he or she is conducting a solicitation for or on behalf of a charitable organization or nonprofit corporation shall disclose:*

(a) *The full legal name of the charitable organization or nonprofit corporation as registered with the Secretary of State pursuant to section 3 of this act;*

(b) *The state or jurisdiction in which the charitable organization or nonprofit corporation was formed;*

(c) *The purpose of the charitable organization or nonprofit corporation; and*

(d) *That the contribution or donation may be tax deductible pursuant to the provisions of section 170(c) of the Internal Revenue Code of 1986, 26 U.S.C. § 170(c), or that the contribution or donation does not qualify for such a federal tax deduction.*

2. A person, in planning, conducting or executing a solicitation for or on behalf of a charitable organization ~~HH~~ *or nonprofit corporation*, shall not:

(a) Make any claim or representation concerning a contribution which directly, or by implication, has the capacity, tendency or effect of deceiving or misleading a person acting reasonably under the circumstances; or

(b) Omit any material fact deemed to be equivalent to a false, misleading or deceptive claim or representation if the omission, when considering what has been said or implied, has or would have the capacity, tendency or effect of deceiving or misleading a person acting reasonably under the circumstances.



\* A B 6 0 R 1 \*



~~12-1~~ 3. Any solicitation that is made in writing for or on behalf of a charitable organization or nonprofit corporation, including, without limitation, an electronic communication, must contain the full legal name of the charitable organization or nonprofit corporation as registered with the Secretary of State pursuant to section 3 of this act and a disclaimer stating that the contribution or donation may be tax deductible pursuant to the provisions of section 170(c) of the Internal Revenue Code of 1986, 26 U.S.C. § 170(c), or that the contribution or donation does not qualify for such a federal tax deduction.

4. Notwithstanding any other provisions of this chapter, the Attorney General has primary jurisdiction to investigate and prosecute a violation of this section.

~~13-1~~ 5. Except as otherwise provided in NRS 41.480 and 41.485, a violation of this section constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.

~~14-1~~ 6. As used in this section:

(a) "Charitable organization" means any person who, directly or indirectly, solicits contributions and who ~~+~~  
~~—(1) The~~ ~~+~~ the Secretary of the Treasury has determined to be tax exempt pursuant to the provisions of section 501(c)(3) of the Internal Revenue Code. ~~+~~ ~~or~~

~~—(2) Is, or holds himself or herself out to be, established for a charitable purpose.~~

~~→~~ The term does not include an organization which is established for and serving bona fide religious purposes.

(b) "Solicitation" means a request for a contribution to a charitable organization *or nonprofit corporation* that is made by ~~+~~ *any means, including, without limitation:*

(1) Mail;

(2) Commercial carrier;

(3) Telephone, facsimile, *electronic mail* or other electronic device; or

(4) A face-to-face meeting.

→ The term includes solicitations which are made from a location within this State and solicitations which are made from a location outside of this State to persons located in this State. *For the purposes of subsections 1 and 3, the term does not include solicitations which are directed only to a total of fewer than 15 persons or only to persons who are related within the third degree of consanguinity or affinity to the officers, directors, trustees or executive personnel of the charitable organization or nonprofit corporation.*



\* A B 6 0 R 1 \*

1      **Sec. 13.**    This act becomes effective on January 1, 2014.

③⑩





