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Date Published: 09/19/2019 04:00 AM

ENROLLED SEPTEMBER 18, 2019

PASSED IN SENATE SEPTEMBER 11, 2019

PASSED IN ASSEMBLY SEPTEMBER 12, 2019

AMENDED IN SENATE SEPTEMBER 06, 2019

AMENDED IN SENATE AUGUST 12, 2019

AMENDED IN SENATE JUNE 28, 2019

AMENDED IN ASSEMBLY APRIL 25, 2019

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

**ASSEMBLY BILL****NO. 1181****Introduced by Assembly Member Limón****February 21, 2019**

An act to amend, repeal, and add Section 17510.5 of the Business and Professions Code, and to amend Section 12599.6 of the Government Code, relating to charitable organizations.

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1181, Limón. Charitable organizations.

Existing law governing solicitations and sale solicitations for charitable purposes requires all financial records of a soliciting organization to be maintained on the basis of generally accepted accounting principles as defined by the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, or the Financial Accounting Standards Board.

This bill would instead require those financial records to be maintained on the basis of generally accepted accounting principles as established by the Financial Accounting Standards Board and the Governmental Accounting Standards Board. The bill would, notwithstanding this requirement, require a noncash pharmaceutical drug, nonprescription drug, medication, medical device, or medical supply contribution received by a charitable organization that is restricted by the donor from being used in the United States to be valued using the fair value of the end recipient market or a reasonable estimate thereof if the end recipient market value cannot be ascertained following a reasonable inquiry. The bill would also require a charitable organization, if the end recipient market is unknown when the noncash pharmaceutical drug, nonprescription drug, medication, medical device, or medical supply contribution is received, to value the contribution using only those markets in which

the contribution is reasonably likely to be distributed or used. The bill would exclude from this provision noncash grants awarded by the United States, any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any of their agencies or governmental subdivisions that provide valuations for their noncash grants to the charitable organizations. The bill would authorize the Attorney General to adopt rules and regulations to carry out these provisions. The bill would make these provisions operative on January 1, 2021.

Existing law, the Uniform 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 holding or soliciting property for charitable purposes over which the state or the Attorney General has enforcement and supervisory powers. The act authorizes the Attorney General to impose specified civil penalties for acts and omissions. The act imposes specific requirements on charitable organizations and commercial fundraisers for charitable purposes and prohibits specified acts and practices in the planning, conduct, or execution of any solicitation or charitable sales promotion, including misrepresenting the purpose of the charitable organization or the nature or purpose or beneficiary of a solicitation. Existing law requires charitable corporations, unincorporated associations, and trustees to file periodic written reports with the Attorney General under oath.

This bill would add to the list of prohibited actions reporting its noncash contributions in its audited financial statements, reports filed with the Attorney General, or solicitation materials, in a way that is misleading or likely to cause confusion. By expanding the crime of perjury with regard to statements made in the periodic written reports, this bill would impose a state-mandated local program.

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 Local Program: yes

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 17510.5 of the Business and Professions Code is amended to read:

**17510.5.** (a) The financial records of a soliciting organization shall be maintained on the basis of generally accepted accounting principles as defined by the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, or the Financial Accounting Standards Board.

(b) The disclosure requirement of paragraph (7) of subdivision (a) of Section 17510.3 shall be based on the same accounting principles used to maintain the soliciting organization's financial records.

(c) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

**SEC. 2.** Section 17510.5 is added to the Business and Professions Code, to read:

**17510.5.** (a) The financial records of a soliciting organization shall be maintained on the basis of generally accepted accounting principles established by the Financial Accounting Standards Board and the Governmental Accounting Standards Board.

(b) The disclosure requirement of paragraph (4) of subdivision (a) of Section 17510.3 shall be based on the same accounting principles used to maintain the soliciting organization's financial records.

(c) (1) Notwithstanding subdivision (a), if a noncash pharmaceutical drug, nonprescription drug, medication, medical device, or medical supply contribution received by a charitable organization is restricted by the donor so that it cannot be used in the United States, the contribution shall be valued using the fair value of the end recipient market or a reasonable estimate thereof if the end recipient market value cannot be ascertained following a reasonable inquiry. If the end recipient market is unknown when the noncash pharmaceutical drug, nonprescription drug, medication, medical device, or medical supply contribution is received, the charitable organization shall value the contribution using only those markets in which the contribution is reasonably likely to be distributed or used, taking into consideration all facts and circumstances that are consistent with any restrictions, including donor restrictions, and with the charitable organization's mission and charitable purpose.

(2) This subdivision does not apply to noncash grants awarded by the United States, any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any of their agencies or governmental subdivisions that provide valuations for their noncash grants to the charitable organization.

(d) For the purposes of this section:

(1) "End recipient market" means the market in the country where the noncash contribution is to be ultimately distributed.

(2) "Fair value" means the price that the receiving charitable organization would receive if it sold the noncash contribution in the end recipient market.

(e) The Attorney General may adopt rules and regulations as necessary to carry out the purposes of this section.

(f) This section shall become operative on January 1, 2021.

**SEC. 3.** Section 12599.6 of the Government Code is amended to read:

**12599.6.** (a) Charitable organizations and commercial fundraisers for charitable purposes shall not misrepresent the purpose of the charitable organization or the nature or purpose or beneficiary of a solicitation. A misrepresentation may be accomplished by words or conduct or failure to disclose a material fact.

(b) A charitable organization must establish and exercise control over its fundraising activities conducted for its benefit, including approval of all written contracts and agreements, and must ensure that fundraising activities are conducted without coercion.

(c) A charitable organization shall not enter into any contract or agreement with, or employ, any commercial fundraiser for charitable purposes or fundraising counsel for charitable purposes unless that commercial fundraiser or fundraising counsel is registered with the Attorney General's Registry of Charitable Trusts or, if not registered, agrees to register prior to the commencement of any solicitation.

(d) A charitable organization shall not enter into any contract or agreement with, or raise any funds for, any charitable organization required to be registered pursuant to this act unless that charitable organization is registered with the Attorney General's Registry of Charitable Trusts or, if not registered, agrees to register prior to the commencement of the solicitation.

(e) Each contribution in the control or custody of a commercial fundraiser for charitable purposes shall in its entirety and within five working days of receipt (1) be deposited in an account at a bank or other federally insured financial institution that is solely in the name of the charitable organization on whose behalf the contribution was solicited and over which the charitable organization has sole control of withdrawals or, (2) be delivered to the charitable organization in person, by Express Mail, or by another method of delivery providing for overnight delivery.

(f) Regardless of injury, the following acts and practices are prohibited in the planning, conduct, or execution of any solicitation or charitable sales promotion:

(1) Operating in violation of, or failing to comply with, any of the requirements of this act or regulations or orders of the Attorney General, or soliciting contributions after registration with the Attorney General's Registry of Charitable Trusts has expired or has been suspended or revoked.

(2) Using any unfair or deceptive acts or practices or engaging in any fraudulent conduct that creates a likelihood of confusion or misunderstanding.

(3) Using any name, symbol, emblem, statement, or other material stating, suggesting, or implying to a reasonable person that the contribution is to or for the benefit of a particular charitable organization when that is not the fact.

(4) Misrepresenting or misleading anyone in any manner to believe that the person on whose behalf a solicitation or charitable sales promotion is being conducted is a charitable organization or that the proceeds of the solicitation or charitable sales promotion will be used for charitable purposes when that is not the fact.

(5) Misrepresenting or misleading anyone in any manner to believe that any other person sponsors, endorses, or approves a charitable solicitation or charitable sales promotion when that person has not given consent in writing

to the use of the person's name for these purposes.

(6) Misrepresenting or misleading anyone in any manner to believe that goods or services have endorsement, sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has endorsement, sponsorship, approval, status, or affiliation that the person does not have.

(7) Using or exploiting the fact of registration with the Attorney General's Registry of Charitable Trusts so as to lead any person to believe that the registration in any manner constitutes an endorsement or approval by the Attorney General. The use of the following statement is not prohibited:

"The official registration and financial information regarding (insert the legal name of the charity as registered with the Registry of Charitable Trusts) can be obtained from the Attorney General's internet website at <http://caag.state.ca.us/charities/>. Registration does not imply endorsement."

(8) Representing directly or by implication that a charitable organization will receive an amount greater than the actual net proceeds reasonably estimated to be retained by the charity for its use.

(9) With respect to solicitations by commercial fundraisers for charitable purposes on behalf of law enforcement personnel, firefighters, or other persons who protect the public safety, issuing, offering, giving, delivering, or distributing any honorary membership cards, courtesy cards, or similar cards, or any stickers, emblems, plates, or other items that could be used for display on a motor vehicle, and that suggest affiliation with, or endorsement by any public safety personnel or a group comprising such personnel.

(10) (A) Soliciting for advertising to appear in a for-profit publication that relates to, purports to relate to, or that could reasonably be construed to relate to, any charitable purpose without making the following disclosures at the time of solicitation:

(i) The publication is a for-profit, commercial enterprise.

(ii) The true name of the solicitor and the fact that the solicitor is a professional solicitor.

(iii) The publication is not affiliated with or sponsored by any charitable organization.

(B) Where a sale of advertising has been made, the solicitor, prior to accepting any money for the sale, shall make to the purchaser the disclosures required by subparagraph (A) in written form and in conspicuous type.

(11) Representing that any part of the contributions solicited by a charitable organization will be given or donated to any other charitable organization unless that organization has consented in writing to the use of its name prior to the solicitation. The written consent shall be signed by one authorized officer, director, or trustee of the charitable organization.

(12) Representing that tickets to events will be donated for use by another, unless all of the following requirements have been met:

(A) The charitable organization or commercial fundraiser has commitments, in writing, from charitable organizations stating that they will accept donated tickets and specifying the number of tickets they are willing to accept.

(B) The donated tickets will not, when combined with other ticket donations, exceed either of the following:

(i) The number of ticket commitments the charitable organization or commercial fundraiser has received from charitable organizations.

(ii) The total attendance capacity of the site of the event.

(13) Reporting noncash contributions in its audited financial statements, reports filed with the Attorney General, or solicitation materials, in a way that is misleading or likely to cause confusion.

(g) A person shall not knowingly submit for filing on behalf of any charitable organization any statement, report, financial statement, attachment, or other information to be filed with the Attorney General that contains information, a statement, or an omission that is false or misleading.

(h) A ticket commitment from a charitable organization alone, as described in clause (i) of subparagraph (B) of paragraph (12) of subdivision (f), does not constitute written consent to use of the organization's name in the solicitation campaign.

**SEC. 4.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.