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 register with the Secretary of State before soliciting charitable contributions in this State; prescribing the information that must be filed with the Secretary of State to register; requiring the Secretary of State to provide certain information concerning registered nonprofit corporations to the public; enacting provisions concerning the investigation of nonprofit corporations; 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 a registration statement and financial report with the Secretary of State. **Section 3** also requires the registration statement to include certain information concerning the nonprofit corporation and authorizes the financial report to be a copy of the nonprofit corporation's Form 990 IRS filing for the most recent fiscal year. The registration and financial statement must be filed annually. **Section 5** of this bill requires a nonprofit corporation to pay a delinquency fee of $50 if the nonprofit corporation fails to file the annual registration and financial statement on or before the due date and authorizes the imposition of additional penalties if the nonprofit corporation fails to file the registration and financial statement within 90 days of notice of the delinquency. **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 of this bill authorizes the Secretary of State to investigate the transactions, solicitations and relationships of a nonprofit corporation required to register with the Secretary of State to determine whether: (1) the purposes of the nonprofit corporation are being carried out in accordance with its articles of incorporation or other instrument setting forth its purposes; (2) the nonprofit corporation or its directors, trustees, officers or executive personnel are complying with existing law governing nonprofit corporations and the solicitation of charitable contributions; and (3) any fiduciary duties arising under law have been breached. **Section 6** also authorizes the Secretary of State to order certain remedial measures if the Secretary of State finds that a nonprofit corporation or any of its directors, trustees, officers or executive personnel have violated a provision of existing law imposing a fiduciary duty or governing the solicitation of charitable contributions.

Section 8 of this bill requires the award of costs and attorney's fees to the State in certain actions relating to nonprofit corporations and authorizes a court to require a responsible officer of a nonprofit corporation to pay a judgment obtained against the nonprofit corporation.

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) whether the charitable organization or nonprofit corporation is exempt from income tax pursuant to section 501(c)(3) 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. 3. ***1. A corporation shall not solicit charitable contributions in this State by any means, or have charitable contributions solicited in the State on its behalf by another person***

or entity, unless the corporation is registered with the Secretary of State pursuant to this section. Each chapter, branch or affiliate of a corporation may register separately.

2. To register initially, a corporation which intends to solicit charitable contributions must file with the Secretary of State:

(a) A registration statement on a form prescribed by the Secretary of State; and

(b) A financial report on a form prescribed by the Secretary of State.

3. The registration statement must include, without limitation:

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

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

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

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

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

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

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

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

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

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

(k) Any other information deemed necessary by the Secretary of State.

4. Except as otherwise provided in this subsection, a financial report must contain the financial information of the corporation for the most recent fiscal year. In the discretion of the Secretary of State, the financial report may be a copy of the Form 990 of the corporation, with all schedules except the schedules of donors, for the most recent fiscal year. If a corporation was first formed within the past year and does not have any financial information or a Form 990 for its most recent fiscal year, the corporation must *complete the financial report using good faith estimates for its current fiscal year on a form prescribed by the Secretary of State.*

5. Except as otherwise provided in subsection 6, to maintain its registration, a corporation which intends to solicit charitable contributions in this State must, on or before the last day of the month in which the anniversary date of its initial registration pursuant to subsection 2 in each year, file with the Secretary of State:

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

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

6. Not later than 45 days before the date on which the filing required by subsection 5 is due, a corporation may file a written application requesting additional time to file the information required by subsection 5 and stating the reason that additional time should be allowed for the filing. If the Secretary of State finds that good cause exists to grant an extension of time for the filing of the information required by subsection 5, the Secretary of State may grant the extension. If the Secretary of State denies the application, the corporation must file the information required by subsection 5 not later than the due date of the filing.

7. A registration statement, financial report or other statement filed by a corporation pursuant to this section is not valid unless signed under oath or affirmation by an officer of the corporation.

8. The Secretary of State shall examine each registration statement, financial report or other statement to determine whether the applicable requirements of this section are satisfied. The Secretary of State shall notify the corporation of any deficiencies in its registration statement, financial report or other statement. The Secretary of State shall issue a registration number to each corporation registered pursuant to this section.

9. All information filed pursuant to this section are public records.

10. Registration pursuant to this section is not an endorsement of any corporation by the Secretary of State or the State of Nevada.

11. As used in this section, "Form 990" means the Return of Organization Exempt from Income Tax (Form 990) of the Internal Revenue Service of the United States Department of the Treasury, or any equivalent or successor form of the Internal Revenue Service of the United States Department of the Treasury.

Sec. 4. *The Secretary of State shall make available to the public and post on the official Internet website of the Secretary of*

State the information provided by each corporation pursuant to section 3 of this act.

Sec. 5. ***1. If the Secretary of State finds that a corporation is soliciting contributions in this State, or is having charitable contributions solicited in this State on its behalf by another person or entity, without filing the information required by subsection 5 of section 3 of this act on or before the due date for the filing, the Secretary of State shall impose a delinquency fee of $50 on the corporation and notify the corporation of the violation by providing written notice to its registered agent. The written notice:***

(a) Must include a statement indicating that the corporation is required to file the information required by subsection 5 of section 3 of this act and pay the delinquency fee imposed pursuant to this subsection.

(b) May be provided electronically.

2. Not later than 90 days after receiving notice from the Secretary of State pursuant to subsection 1, the corporation must file the information required by subsection 5 of section 3 of this act and pay the delinquency fee imposed pursuant to subsection 1. If the corporation fails to file the information required by subsection 5 of section 3 of this act and pay the delinquency fee within 90 days of receiving the notice, the Secretary of State may, in addition to imposing the delinquency fee, take any or all of the following actions:

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

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

3. An action taken pursuant to subsection 2 is a final decision for the purposes of judicial review pursuant to chapter 233B of NRS. In a judicial review of an action taken pursuant to subsection 2, the court may reverse or modify an action of the Secretary of State only if the court finds that the Secretary of State lacked authority to take the action or that the amount of a civil penalty imposed by the Secretary of State is unconscionable under the circumstances.

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

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

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

Sec. 6. ***1. The Secretary of State may investigate the transactions, solicitations and relationships of a corporation subject to the requirements of sections 2 to 9, inclusive, of this act to ascertain whether:***

(a) The purposes of the corporation are being carried out in accordance with the articles of incorporation or any other instrument setting forth the purposes of the corporation.

(b) The corporation is soliciting charitable contributions, or having charitable contributions solicited on its behalf by another person or entity, in accordance with sections 2 to 9, inclusive, of this act and any other provision of the laws of this State governing the solicitation of charitable contributions.

(c) The corporation, or any director, trustee, officer or executive personnel of the corporation, has breached a fiduciary duty arising under law.

2. The Secretary of State, when conducting an investigation pursuant to subsection 1, may subpoena witnesses and require the production by subpoena of any books, papers, correspondence, memoranda, agreements or other documents or records that the Secretary of State or a designated officer or employee of the Secretary of State determines are relevant or material to the investigation.

3. If a person fails to testify or produce any documents or records in accordance with a subpoena issued pursuant to subsection 2, the Secretary of State or designated officer or employee may apply to the court for an order compelling compliance. A request for an order of compliance may be addressed to:

(a) The district court in and for the county where service may be obtained on the person refusing to testify or produce the documents or records, if the person is subject to service of process in this State; or

(b) A court of another state having jurisdiction over the person refusing to testify or produce the documents or records, if the person is not subject to service of process in this State.

4. If the Secretary of State finds that a corporation, or any director, trustee, officer or executive personnel of the corporation, has violated any provision of the laws of this State governing the solicitation of charitable contributions or any provision of the laws of this State imposing a fiduciary duty on the corporation or the director, trustee, officer or executive personnel of the corporation, the Secretary of State may issue an order requiring the

corporation or the director, trustee, officer or executive personnel to take actions deemed appropriate by the Secretary of State to remedy the violation. If the corporation or the director, trustee, officer or executive personnel do not take the actions ordered by the Secretary of State, the Secretary of State may:

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

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

5. The Secretary of State may request the Attorney General to institute appropriate proceedings in a court of competent jurisdiction to secure compliance with the provisions of sections 2 to 9, inclusive, of this act.

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

Sec. 8. ***In any suit or action brought in the name of the State of Nevada against a corporation, or a director, trustee or officer of a corporation, to enforce a fiduciary duty or any other duty arising under the laws of this State governing corporations or the laws of this State governing the solicitation of charitable contributions, if the State of Nevada prevails, the court shall award the State of Nevada court costs and attorney's fees. The costs awarded pursuant to this subsection may include, without limitation, reasonable investigative expenses and reasonable expert witness fees. In the discretion of the court, a judgment in a suit or action pursuant to this section may be a judgment against the responsible officers of the corporation.***

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

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

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

1. Borrow money and contract debts when necessary for the transaction of its business, or for the exercise of its corporate rights, privileges or franchises, or for any other lawful purpose of its incorporation, issue bonds, promissory notes, drafts, debentures and other obligations and evidences of indebtedness, payable at a specified time or times, or payable upon the happening of a

specified event or events, whether secured by mortgage, pledge or other security, or unsecured, for money borrowed, or in payment for property purchased or acquired, or for any other lawful object.

2. Guarantee, purchase, hold, take, obtain, receive, subscribe for, own, use, dispose of, sell, exchange, lease, lend, assign, mortgage, pledge or otherwise acquire, transfer or deal in or with bonds or obligations of, or shares, securities or interests in or issued by any person, government, governmental agency or political subdivision of government, and exercise all the rights, powers and privileges of ownership of such an interest, including the right to vote, if any.

3. Issue certificates evidencing membership and issue identity cards.

4. Make donations for the public welfare or for community funds, hospital, charitable, educational, scientific, civil, religious or similar purposes.

5. Levy dues, assessments and fees.

6. Purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

7. Carry on a business for profit and apply any profit that results from the business to any activity in which it may lawfully engage.

8. Participate with others in any partnership, joint venture or other association, transaction or arrangement of any kind, whether or not participation involves sharing or delegation of control with or to others.

9. Act as trustee under any trust incidental to the principal objects of the corporation, and receive, hold, administer, exchange and expend funds and property subject to the trust.

10. Pay reasonable compensation to officers, directors and employees, pay pensions, retirement allowances and compensation for past services, and establish incentive or benefit plans, trusts and provisions for the benefit of its officers, directors, employees, agents and their families, dependents and beneficiaries, and indemnify and buy insurance for a fiduciary of such a benefit or incentive plan, trust or provision.

11. Have one or more offices, and hold, purchase, mortgage and convey real and personal property in this State, and in any of the several states, territories, possessions and dependencies of the United States, the District of Columbia and any foreign countries.

12. Do everything necessary and proper for the accomplishment of the objects enumerated in its articles of incorporation, or necessary or incidental to the protection and

benefit of the corporation, and, in general, to carry on any lawful business necessary or incidental to the attainment of the objects of the corporation, whether or not the business is similar in nature to the objects set forth in the articles of incorporation of the corporation, except that:

(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 ~~[If]~~ ***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) Whether the charitable organization or nonprofit corporation is tax exempt pursuant to the provisions of section 501(c)(3) of the Internal Revenue Code.

2. A person, in planning, conducting or executing a solicitation for or on behalf of a charitable organization ~~[,]~~ ***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.

~~[2.]~~ ***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, the registration number issued by the Secretary of State pursuant to section 3 of this act and a disclaimer stating whether the charitable organization or nonprofit corporation is tax exempt pursuant to the provisions of section 501(c)(3) of the Internal Revenue Code.***

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

~~[3.]~~ ***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.

~~[4.]~~ ***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 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.

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

㉚