

SENATE BILL NO. 62—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the solicitation of contributions. (BDR 7-413)

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

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

AN ACT relating to solicitation of contributions; expanding the types of organizations required to register with the Secretary of State as a charitable organization and make certain disclosures in connection with the solicitation of contributions; revising provisions governing the information required to be filed with the Secretary of State to register as a charitable organization; revising the information required to be disclosed in connection with the solicitation of contributions; revising provisions governing the solicitation of contributions by certain charitable organizations and nonprofit corporations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires certain charitable organizations that are exempt from federal income taxes pursuant to 26 U.S.C. § 501(c)(3) and that solicit charitable contributions in this State to register annually with the Secretary of State by filing certain information and a financial report with the Secretary of State. (NRS 82A.100, 82A.110) Existing law also requires a solicitation for any contribution by, for or on behalf of such a charitable organization or certain other nonprofit organizations to contain certain disclosures. (NRS 82A.200, 82A.210) **Sections 1 and 2** of this bill expand the requirements to register annually with the Secretary of State and provide certain disclosures in connection with the solicitation of contributions to include the following entities that are not exempt from federal income taxes pursuant to 26 U.S.C. § 501(c)(3) and that solicit certain types of contributions: (1) entities that are established for any benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental



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conservation, civic or other eleemosynary purpose; (2) entities that are established for the benefit of law enforcement, firefighting or public safety personnel; and (3) entities that employ a charitable appeal or reason in soliciting contributions. **Section 3** of this bill makes conforming changes to the information required to be included in a registration filed with the Secretary of State to reflect that an entity required to register may not be registered as tax-exempt with the Internal Revenue Service or organized as an entity filed with the Secretary of State. **Section 5** of this bill makes various changes to the information required to be disclosed in a solicitation by a charitable organization to reflect the expansion of the types of organizations required to provide such disclosures. **Sections 4, 6, 7 and 9** of this bill make conforming changes to refer to terminology revised by **section 2**.

Existing law prohibits a person who plans, conducts or executes a solicitation for or on behalf of a charitable organization or nonprofit corporation from making certain false claims or omitting certain facts in the solicitation, and provides that engaging in such acts constitutes a deceptive trade practice. (NRS 598.1305) **Section 8** of this bill expands the types of charitable organizations subject to these provisions to apply the prohibitions to the additional charitable organizations subject to the registration and disclosure requirements.

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

Section 1. NRS 82A.025 is hereby amended to read as follows:

82A.025 **1.** “Charitable organization” means any person who, directly or indirectly, solicits contributions, and who ~~the~~:

(a) 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, 26 U.S.C. § 501(c)(3) ~~H~~;

(b) Is or purports to be established for:

(1) Any benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic or other eleemosynary purpose; or

(2) The benefit of law enforcement, firefighting or other public safety personnel; or

(c) In any manner employs:

(1) A charitable appeal as the basis of any solicitation; or

(2) An appeal that suggests there is a charitable reason for the solicitation.

2. The term does not include an organization that is established for and serving bona fide religious purposes.

3. As used in this section, “charitable reason” means:

(a) Any reason described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3);

(b) Any benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic or other eleemosynary reason; or



(c) Any objective that benefits law enforcement, firefighting or other public safety personnel.

Sec. 2. NRS 82A.040 is hereby amended to read as follows:

82A.040 1. "Contribution" means the promise or grant of any money or property of any kind or value.

2. *The term does not include any:*

(a) *Bona fide fees; or*

(b) *Dues or assessments paid by members, if the membership is not conferred solely as a consideration for making a contribution in response to a solicitation.*

3. *Nothing in this section shall be construed to require a contribution to be tax deductible pursuant to the provisions of section 170 of the Internal Revenue Code, 26 U.S.C. § 170.*

Sec. 3. NRS 82A.100 is hereby amended to read as follows:

82A.100 1. Except as otherwise provided in NRS 82A.110, a charitable organization shall not solicit ~~{charitable}~~ contributions in this State, or have ~~{charitable}~~ contributions solicited in this State on its behalf by another person, unless the charitable organization is registered with the Secretary of State pursuant to this section. Each chapter, branch or affiliate of a charitable organization may register separately.

2. A charitable organization that wishes to register with the Secretary of State as set forth in subsection 1 must file on a form prescribed by the Secretary of State:

(a) The information required by subsection 4; and

(b) A financial report that satisfies the requirements of subsection 5.

3. If a charitable organization is:

(a) An entity required to file an initial or annual list with the Secretary of State pursuant to this title, the charitable organization must file the information and financial report required by subsection 2 at the time of filing the initial list and at the time of filing each annual list. If the charitable organization did not file the information and financial report required by subsection 2 at the time of filing its initial list or at the time of filing its most recent annual list, it must file the information required by subsection 2 before soliciting ~~{charitable}~~ contributions in this State, or having ~~{charitable}~~ contributions solicited in this State on its behalf by another person, and thereafter at the time of filing each annual list.

(b) Not an entity required to file an initial or annual list with the Secretary of State pursuant to this title, the charitable organization must file the information and financial report required by subsection 2 before it solicits ~~{charitable}~~ contributions in this State, or has ~~{charitable}~~ contributions solicited in this State on its behalf by another person, and annually thereafter on the last day of the month



1 in which the anniversary date of the initial filing of the information
2 and financial report.

3 4. The form required by subsection 2 must include, without
4 limitation:

5 (a) The ~~{exact}~~ **full legal** name of the charitable organization ;
6 ~~{as registered with the Internal Revenue Service;}~~

7 (b) The federal tax identification number of the charitable
8 organization ~~{}~~, **if applicable;**

9 (c) ~~{The name of the charitable organization as registered with
10 the Secretary of State or, in the case of a foreign charitable
11 organization, the name of the foreign charitable organization as filed
12 in its jurisdiction of origin;~~

13 ~~—(d)}~~ The name or names under which the charitable organization
14 intends to solicit ~~{charitable}~~ contributions;

15 ~~{(e)}~~ **(d) One of the following:**

16 (1) The address and telephone number of the principal place
17 of business of the charitable organization and the address and
18 telephone number of any offices of the charitable organization in
19 this State ; or ~~{, if}~~

20 (2) **If** the charitable organization does not maintain an office
21 in this State ~~{}~~ **or does not maintain an office,** the name, address
22 and telephone number of the custodian of the financial records of
23 the charitable organization;

24 ~~{(f)}~~ **(e)** The names and addresses, either residence or business,
25 of the executive personnel of the charitable organization;

26 ~~{(g)}~~ **(f)** The last day of the fiscal year of the charitable
27 organization;

28 ~~{(h)}~~ **(g)** The jurisdiction and date of the formation of the
29 charitable organization;

30 ~~{(i)}~~ **(h)** The tax exempt status of the charitable organization ~~{}~~,
31 **if applicable;**

32 ~~{(j)}~~ **(i)** If the charitable organization does not file with the
33 Secretary of State articles of incorporation or any other formation
34 document, including, without limitation, a foreign qualification
35 document, as defined in NRS 77.090:

36 (1) The purpose for which the charitable organization is
37 organized; and

38 (2) The names and addresses, either residence or business, of
39 the officers, directors and trustees of the charitable organization; and

40 ~~{(k)}~~ **(j)** Any other information deemed necessary by the
41 Secretary of State, as prescribed by regulations adopted by the
42 Secretary of State pursuant to NRS 82A.085.

43 5. Except as otherwise provided in this subsection, a financial
44 report must contain the financial information of the charitable
45 organization 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 charitable organization, with all schedules except the schedules of donors, for the most recent fiscal year. If a charitable organization 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 charitable organization must complete the financial report on a form prescribed by the Secretary of State using good faith estimates for its current fiscal year.

6. All information and the financial report filed pursuant to this section are public records. The filing of information pursuant to this section is not an endorsement of any charitable organization by the Secretary of State or the State of Nevada.

Sec. 4. NRS 82A.110 is hereby amended to read as follows:

82A.110 1. A charitable organization is not required to be registered with the Secretary of State pursuant to NRS 82A.100 during any year in which its only solicitations for contributions, donations, gifts or the like are:

(a) Directed only to a total of fewer than 15 persons annually;

(b) Directed 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;

(c) Appeals for funds to benefit a particular person or his or her immediate family named in the solicitation, but only if all the proceeds of the solicitation are given to or expended for the direct benefit of the person or his or her immediate family; or

(d) Conducted by an alumni association of an accredited institution which solicits only persons who have an established affiliation with the institution, including, without limitation, current and former students, members of the faculty or staff, or persons who are within the third degree of consanguinity or affinity of such persons.

2. A charitable organization that believes it is exempt from registration pursuant to this section must, before it solicits a ~~charitable~~ contribution in this State or has a ~~charitable~~ contribution solicited in this State on its behalf by another person, and annually thereafter, file a declaration of exemption on a form prescribed by the Secretary of State.

Sec. 5. NRS 82A.200 is hereby amended to read as follows:

82A.200 1. Except as otherwise provided in this section and NRS 82A.210, a solicitation for a contribution by, for or on behalf of a charitable organization or nonprofit organization, including, without limitation, a solicitation by means of electronic mail or other electronic medium or device, must disclose the following information:



(a) The full legal name of the charitable organization or nonprofit organization as registered with the Secretary of State pursuant to this title;

(b) If the charitable organization or nonprofit organization is not registered or not required to be registered with the Secretary of State pursuant to this title ~~{, the}~~ :

(1) *The full legal name of the charitable organization or nonprofit organization;* and ~~{the}~~

(2) *The physical address of {the principal} :*

(I) *The principal place of business of the charitable organization or nonprofit organization; or*

(II) *The custodian of financial records of the charitable organization or nonprofit organization, if the charitable organization or nonprofit organization does not have a physical address;*

(c) ~~{A published}~~ *One of the following:*

(1) *A phone number {or Internet address of a website} for the physical address of the principle place of business of the charitable organization or nonprofit organization {;} or, if the charitable organization does not have a physical address, the phone number of the custodian of financial records of the charitable organization or nonprofit organization; or*

(2) *An Internet address of a website for the charitable organization or nonprofit organization;*

(d) A statement or description of the purpose of the charitable organization or nonprofit organization; and

(e) A statement that the contribution:

(1) *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)} , including a reference to the provision of law harboring the potential tax deduction; or*

(2) ~~{Does}~~ *May* not qualify for such a federal tax deduction.

2. A solicitation for a contribution by, for or on behalf of a charitable organization or nonprofit organization by means of electronic medium or device, other than electronic mail, is deemed to comply with the requirements of subsection 1 if:

(a) The information required to be disclosed pursuant to subsection 1 may be obtained from an Internet website maintained by the charitable organization or nonprofit organization;

(b) The charitable organization or nonprofit organization provides a hyperlink to that Internet website; and

(c) The statement required by paragraph (e) of subsection 1 is located conspicuously on that Internet website or on the page of that Internet website where the donor commits to the ~~{charitable}~~ contribution.



3. A solicitation or pledge drive conducted by a charitable organization or nonprofit organization as part of a broadcast telethon, radiothon, webcast or any similar form of broadcast communication is not required to provide the disclosure required by this section throughout the broadcast event, but must disclose the information to a prospective donor before the donor commits or pledges to make a contribution.

4. A disclosure provided in connection with an appeal for funds to benefit a particular person or his or her immediate family must contain:

(a) The name of the particular person or family members who are to benefit from the appeal; and

(b) A statement that a contribution in response to the appeal may not qualify for a federal tax deduction.

Sec. 6. NRS 82A.300 is hereby amended to read as follows:

82A.300 1. If the Secretary of State finds that a charitable organization which is required to file the information and financial report required for registration pursuant to subsection 2 of NRS 82A.100 is soliciting ~~charitable~~ contributions in this State, or is having ~~charitable~~ contributions solicited in this State on its behalf by another person, without having filed the information and financial report required for registration on or before the due date for the filing established pursuant to subsection 3 of NRS 82A.100, the Secretary of State shall:

(a) If the charitable organization is required to file an annual list with the Secretary of State pursuant to this title, impose the penalty for default in the filing of an annual list set forth in the provisions of this title applicable to the charitable organization and notify the charitable organization of the violation by providing written notice to its registered agent. The notice:

(1) Must include a statement that the charitable organization is required to file the information and financial statement required for registration by subsection 2 of NRS 82A.100 and pay the penalty for default in the filing of an annual list set forth in the provisions of this title applicable to the charitable organization; and

(2) May be provided electronically.

(b) If the charitable organization is not required to file an annual list with the Secretary of State pursuant to this title, impose a penalty in the amount of \$50 for the failure of the charitable organization to file the information and financial report required for registration as required pursuant to subsection 2 of NRS 82A.100 and notify the charitable organization of the violation by providing written notice to the charitable organization. The notice:

(1) Must include a statement indicating that the charitable organization is required to file the information and financial report



required for registration by subsection 2 of NRS 82A.100 and pay the penalty as set forth in this paragraph; and

(2) May be provided electronically.

2. If a charitable organization fails to file the information and financial report required by subsection 2 of NRS 82A.100 and pay the penalty for default as set forth in this section within 90 days after the charitable organization or its registered agent receives the written notice provided pursuant to subsection 1, the Secretary of State may, in addition to imposing the penalty for default as set forth in this section, 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 charitable organization by another person.

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

4. If a charitable organization 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 charitable organization is organized pursuant to this title, revoke the charter of the charitable organization. If the charter of the charitable organization is revoked pursuant to this paragraph, the charitable organization forfeits its right to transact business in this State.

(b) If the charitable organization is ~~a foreign nonprofit charitable organization.~~ **not organized pursuant to this title**, forfeit the right ~~of the foreign nonprofit charitable organization~~ **of the charitable organization** to transact business in this State.

(c) Refer the matter to the Attorney General for a determination of whether to institute proceedings pursuant to NRS 82A.310.

Sec. 7. NRS 82A.310 is hereby amended to read as follows:

82A.310 1. If the Secretary of State believes that a person has violated any provision of this chapter, NRS 598.1305 or any other provision of the laws of this State governing the solicitation of ~~charitable~~ contributions, the Secretary of State shall notify the person in writing of the alleged violation.

2. The Secretary of State may refer an alleged violation of any provision of this chapter, NRS 598.1305 or any other provision of the laws of this State governing the solicitation of ~~charitable~~ contributions to the Attorney General for a determination of whether to institute proceedings in a court of competent jurisdiction to enforce the provisions of this chapter, NRS 598.1305 or any other provision of the laws of this State governing the solicitation of



~~{charitable}~~ contributions. The Attorney General may institute and prosecute the appropriate proceedings to enforce the provisions of this chapter, NRS 598.1305 or any other provision of the laws of this State governing the solicitation of ~~{charitable}~~ contributions.

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

Sec. 8. NRS 598.1305 is hereby amended to read as follows:

598.1305 1. 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. Notwithstanding any other provisions of this chapter, the Attorney General has primary jurisdiction to investigate and prosecute a violation of this section.

3. 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. As used in this section:

(a) "Charitable organization" ~~{means}~~ :

(1) Means any person who, directly or indirectly, solicits contributions and who ~~{the}~~ :

(I) 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 ~~{The term does}~~, 26 U.S.C. § 501(c)(3);

(II) Is or purports to be established for any benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic or other eleemosynary purpose, or for the benefit of law enforcement, firefighting or other public safety personnel; or



(III) *In any manner employs a charitable appeal as the basis of any solicitation or an appeal that suggests there is a charitable reason for a solicitation.*

(2) *Does* not include an organization which is established for and serving bona fide religious purposes.

(b) *“Charitable reason” means:*

(1) *Any reason described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3);*

(2) *Any benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic or other eleemosynary reason; or*

(3) *Any objective that benefits law enforcement, firefighting or other public safety personnel.*

(c) *“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 medium or device; or

(4) A face-to-face meeting.

➔ The term includes, without limitation, 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. 9. NRS 82A.020 is hereby repealed.

TEXT OF REPEALED SECTION

82A.020 “Charitable contribution” defined. “Charitable contribution” means a contribution that is allowable 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.

