

LEGISLATIVE ALERT

NEW LAW GOVERNING NONPROFITS AND CHARITABLE FUNDRAISING IN CALIFORNIA: “NONPROFIT INTEGRITY ACT OF 2004”

The governor recently signed a new law that affects nonprofit organizations in California. SB 1262, known as the “Nonprofit Integrity Act of 2004,” amends certain legal provisions applicable to the governance of California nonprofit organizations and charitable fundraising in California. The new law takes effect on January 1, 2005.

The following alert highlights some of the major requirements the Act imposes on California nonprofit organizations and on charitable fundraising activities in California. If you are a director or officer of a California nonprofit organization, you should familiarize yourself with the requirements imposed by this Act so that you can help your organization comply with these new laws.

Should you require further assistance or information, please call Public Counsel’s Community Development Project at (213) 385-2977, extension 200. Our attorneys provide free legal assistance to qualified nonprofit organizations.

This alert should not be construed as legal advice. This alert is designed as a highlight of the new law and will not be updated. There are numerous other laws and reporting requirements to which California nonprofit organizations are subject that are not included in this alert. Please contact an attorney if you need legal advice about the conduct of fundraising activities or otherwise.



SB 1262: The “Nonprofit Integrity Act of 2004”

What organizations are affected by the Act?

The Act affects all charitable corporations, charitable trusts and unincorporated organizations that are required to register with the California Attorney General’s Registry of Charitable Trusts (these entities are referred to as “charitable organizations” in this Alert). This includes not only organizations that are organized under the laws of California, but also non-California nonprofits that hold property or do business in California. Generally, hospitals, educational institutions and religious organizations are exempt from registration and therefore are not affected by the Act.

The Act also imposes requirements on commercial fundraisers and fundraising counsel, and regulates the terms of fundraising contracts. Certain provisions of the Act relating to financial audits and board audit committees apply only to charitable organizations with annual gross revenues exceeding \$2 million.

When will the Act take effect?

The Act will take effect on January 1, 2005.

What requirements of the Act apply to all nonprofits, regardless of size?

Registration with the Attorney General’s Registry of Charitable Trusts

All charitable organizations must register with the Registry of Charitable Trusts within 30 days after they first acquire or accrue assets. This change accelerates the registration deadline, which is currently 6 months after the acquisition of any assets.

Charitable Fundraising Activities

The Act requires that all charitable organizations must “establish and exercise control” over their fundraising activities and over any fundraising activities conducted by others for their benefit. Every charitable organization must assure that all fundraising activities conducted on its behalf, whether by its employees, its volunteers, or a paid fundraiser, are conducted without coercion. In addition, charitable organizations must approve every written contract entered into in connection with any fundraising activity conducted on its behalf.

In connection with fundraising, charitable organizations (and commercial fundraisers) are prohibited from misrepresenting the purpose of the charitable organization or of the fundraising solicitation. The Act also prohibits a list of twelve specific acts and practices (generally involving non-compliance with law, misrepresentations or use of misleading information) in connection with fundraising, regardless of whether the actions result in injury to any person. These prohibited acts are listed in new section 12599.6(f) of the California Government Code.

The Act prohibits charitable organizations from entering into contracts with any commercial fundraiser that has not

registered as required with the Attorney General. A contract between a commercial fundraiser and a charitable organization is voidable if the commercial fundraiser is not registered as required before the start of the solicitation.

All charitable organizations are also prohibited from entering into contracts with, or raising funds for, any other charity, if the other charity is required to register with the Registry of Charitable Trusts but has not done so. Charitable organizations should verify the registration status of any charity or commercial fundraiser with which they wish to contract (this search may be conducted by going to the Attorney General's website -- see <http://www.guidestar.org/partners/cadoj/index.jsp> to search for charitable organizations, or <http://justice.doj.ca.gov/cfr/cfr.asp> to search for commercial fundraisers).

Review of Executive Compensation

Every charitable organization must have its governing board (or a board committee) review and approve the compensation (including benefits) of the Chief Executive Officer and the Chief Financial Officer, to verify that the compensation is "just and reasonable". This review must be done at the time of hiring and again whenever the compensation is modified or the employment term is extended.

Financial Reporting

The Act requires any charitable organization that prepares audited financial statements, whether it is required to do so or not, to make those financial statements available for inspection by the Attorney General and the public.

What requirements of the Act apply only to larger nonprofits?

Charitable organizations that receive or accrue, in any fiscal year, gross revenue of \$2 million or more (not including government funding for which the recipient must account to the government) must prepare annual financial statements audited by independent certified public accountants in accordance with generally accepted accounting principles (GAAP). The audited financial statements must be made available for inspection by the Attorney General and by the public no later than nine months after the close of the fiscal year.

Any such large charity that is a corporation must appoint an audit committee. Rules as to who may sit on the audit committee, and duties and requirements of the audit committee, are described in amended section 12586(e)(2) of the Government Code.

Does the Act regulate contracts between charities and commercial fundraisers?

Yes. The Act requires that for each fundraising event or campaign produced by a commercial fundraiser, there must be a written contract, signed by an authorized officer of the charitable organization. The provisions that must be included in such contract, and the rules governing such contracts, are specified in Government Code section 12599(i). Similar provisions apply to contracts with fundraising counsel (as defined in the Act).

Charitable organizations have the right to cancel a contract with a commercial fundraiser without liability for the first 10 days after signing the contract. After the first 10 days, the charitable organization can cancel the contract with 30 days notice (or without any notice or liability if cancelled for certain specified causes).

What other requirements are imposed on commercial fundraisers and fundraising counsel?

Commercial fundraisers cannot solicit in California on behalf of any charitable organization unless they are registered with the Attorney General's Registry of Charitable Trusts.

A commercial fundraiser or fundraising counsel must notify the Attorney General no less than 10 days before starting a fundraising campaign or event, except in the case of certain emergencies. Commercial fundraisers must also keep records of each solicitation campaign for at least 10 years. Commercial fundraisers must deliver any funds raised on behalf of a charitable organization to that organization (or to a bank account controlled by the organization) within 5 working days of receipt.

Where can I find more information?

The Attorney General's summary of the Act can be found at:

http://caag.state.ca.us/charities/publications/nonprofit_integrity_act_summary_oct04.pdf.

The full text of the Act can be found at: http://www.leginfo.ca.gov/pub/bill/sen/sb_1251-1300/sb_1262_bill_20040930_chaptered.pdf.

California Government Code provisions and other laws currently in effect applicable to the regulation of charitable organizations by the Attorney General can be found at: <http://caag.state.ca.us/charities/statutes.htm>. Note that until January 1, the amended version of these laws as revised by the Act may not appear at this site.
