

AMENDED IN ASSEMBLY JANUARY 6, 2020

AMENDED IN ASSEMBLY JUNE 11, 2019

AMENDED IN ASSEMBLY MARCH 28, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1712

Introduced by Assembly Member Wicks

February 22, 2019

An act to amend Section 12586 of the Government Code, relating to charitable organizations.

LEGISLATIVE COUNSEL’S DIGEST

AB 1712, as amended, Wicks. ~~Donor advised~~ *Donor-advised* funds.

The 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. Under the act, specified charitable corporations and trustees are required to file with the Attorney General periodic written reports, under oath, that set forth information as to the nature of the assets held for charitable purposes and the administration of these assets by the corporation or the trustee in accordance with rules and regulations of the Attorney General. Existing law exempts from this filing requirement corporate trustees subject to the jurisdiction of the Commissioner of Business Oversight.

This bill would also require the Attorney General to adopt rules and regulations requiring a donor-advised fund, as defined, to include specified information in reports to the Attorney General for the purpose

of helping the Attorney General determine whether the funds or accounts managed by the donor-advised fund are being administered properly. *The bill would also prohibit the disclosure of the personal information that identifies an individual donor and would exempt a donor-advised fund sponsoring organization from disclosure requirements if it meets specified, self-certified conditions.*

This bill would make nonsubstantive changes and a conforming change.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12586 of the Government Code is
2 amended to read:
3 12586. (a) Except as otherwise provided and except corporate
4 trustees which are subject to the jurisdiction of the Commissioner
5 of Business Oversight under Division 1 (commencing with Section
6 99) of the Financial Code or to the Comptroller of the Currency
7 of the United States, every charitable corporation, unincorporated
8 association, and trustee subject to this article shall, in addition to
9 filing copies of the instruments previously required, file with the
10 Attorney General periodic written reports, under oath, setting forth
11 information as to the nature of the assets held for charitable
12 purposes and the administration thereof by the corporation,
13 unincorporated association, or trustee, in accordance with rules
14 and regulations of the Attorney General.
15 (b) The Attorney General shall make rules and regulations as
16 to the time for filing reports, the contents thereof, and the manner
17 of executing and filing them. The Attorney General may classify
18 trusts and other relationships concerning property held for a
19 charitable purpose as to purpose, nature of assets, duration of the
20 trust or other relationship, amount of assets, amounts to be devoted
21 to charitable purposes, nature of trustee, or otherwise, and may
22 establish different rules for the different classes as to time and
23 nature of the reports required to ensure that the Attorney General
24 shall receive reasonably current, periodic reports as to all charitable
25 trusts or other relationships of a similar nature, which will enable
26 the Attorney General to ascertain whether they are being properly
27 administered, and to ensure that periodic reports shall not

unreasonably add to the expense of the administration of charitable trusts and similar relationships. The Attorney General may suspend the filing of reports as to a particular charitable trust or relationship for a reasonable, specifically designated time upon written application of the trustee filed with the Attorney General and after the Attorney General has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports are not required for proper supervision by the office of the Attorney General.

(c) A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship, if the account substantially complies with the rules and regulations of the Attorney General, may be filed as a report required by this section.

(d) The first periodic written report, unless the filing thereof is suspended as herein provided, shall be filed not later than four months and 15 days following the close of the first calendar or fiscal year in which property is initially received. If any part of the income or principal of a trust previously established is authorized or required to be applied to a charitable purpose at the time this article takes effect, the first report shall be filed at the close of the calendar or fiscal year in which it was registered with the Attorney General or not later than four months and 15 days following the close of the calendar or fiscal period.

(e) Every charitable corporation, unincorporated association, and trustee required to file reports with the Attorney General pursuant to this section that receives or accrues in any fiscal year gross revenue of two million dollars (\$2,000,000) or more, exclusive of grants from, and contracts for services with, governmental entities for which the governmental entity requires an accounting of the funds received, shall do the following:

(1) Prepare annual financial statements using generally accepted accounting principles that are audited by an independent certified public accountant in conformity with generally accepted auditing standards. For any nonaudit services performed by the firm conducting the audit, the firm and its individual auditors shall adhere to the standards for auditor independence set forth in the latest revision of the Government Auditing Standards, issued by the Comptroller General of the United States (the Yellow Book). The Attorney General may, by regulation, prescribe standards for auditor independence in the performance of nonaudit services,

1 including standards different from those set forth in the Yellow
2 Book. If a charitable corporation or unincorporated association
3 that is required to prepare an annual financial statement pursuant
4 to this subdivision is under the control of another organization,
5 the controlling organization may prepare a consolidated financial
6 statement. The audited financial statements shall be available for
7 inspection by the Attorney General and by members of the public
8 no later than nine months after the close of the fiscal year to which
9 the statements relate. A charity shall make its annual audited
10 financial statements available to the public in the same manner
11 that is prescribed for IRS Form 990 by the latest revision of Section
12 6104(d) of the Internal Revenue Code and associated regulations.

13 (2) If it is a corporation, have an audit committee appointed by
14 the board of directors. The audit committee may include persons
15 who are not members of the board of directors, but the member or
16 members of the audit committee shall not include any members
17 of the staff, including the president or chief executive officer and
18 the treasurer or chief financial officer. If the corporation has a
19 finance committee, it must be separate from the audit committee.
20 Members of the finance committee may serve on the audit
21 committee; however, the chairperson of the audit committee may
22 not be a member of the finance committee and members of the
23 finance committee shall constitute less than one-half of the
24 membership of the audit committee. Members of the audit
25 committee shall not receive any compensation from the corporation
26 in excess of the compensation, if any, received by members of the
27 board of directors for service on the board and shall not have a
28 material financial interest in any entity doing business with the
29 corporation. Subject to the supervision of the board of directors,
30 the audit committee shall be responsible for recommending to the
31 board of directors the retention and termination of the independent
32 auditor and may negotiate the independent auditor's compensation,
33 on behalf of the board of directors. The audit committee shall
34 confer with the auditor to satisfy its members that the financial
35 affairs of the corporation are in order, shall review and determine
36 whether to accept the audit, shall assure that any nonaudit services
37 performed by the auditing firm conform with standards for auditor
38 independence referred to in paragraph (1), and shall approve
39 performance of nonaudit services by the auditing firm. If the
40 charitable corporation that is required to have an audit committee

1 pursuant to this subdivision is under the control of another
2 corporation, the audit committee may be part of the board of
3 directors of the controlling corporation.

4 (f) If, independent of the audit requirement set forth in paragraph
5 (1) of subdivision (e), a charitable corporation, unincorporated
6 association, or trustee required to file reports with the Attorney
7 General pursuant to this section prepares financial statements that
8 are audited by a certified public accountant, the audited financial
9 statements shall be available for inspection by the Attorney General
10 and shall be made available to members of the public in conformity
11 with paragraph (1) of subdivision (e).

12 (g) The board of directors of a charitable corporation or
13 unincorporated association, or an authorized committee of the
14 board, and the trustee or trustees of a charitable trust shall review
15 and approve the compensation, including benefits, of the president
16 or chief executive officer and the treasurer or chief financial officer
17 to assure that it is just and reasonable. This review and approval
18 shall occur initially upon the hiring of the officer, whenever the
19 term of employment, if any, of the officer is renewed or extended,
20 and whenever the officer's compensation is modified. Separate
21 review and approval shall not be required if a modification of
22 compensation extends to substantially all employees. If a charitable
23 corporation is affiliated with other charitable corporations, the
24 requirements of this section shall be satisfied if review and approval
25 is obtained from the board, or an authorized committee of the
26 board, of the charitable corporation that makes retention and
27 compensation decisions regarding a particular individual.

28 (h) (1) For the purposes of this subdivision, a "donor-advised
29 fund sponsor" means any organization that is required to file reports
30 with the Attorney General pursuant to this section and maintains
31 one or more funds or accounts to which all of the following apply:

32 (A) The funds or accounts are separately identified by reference
33 to contributions of a donor or donors.

34 (B) The funds or accounts are owned and controlled by the fund
35 sponsor.

36 (C) A donor, or any person appointed or designated by ~~such~~
37 *that* donor, has or reasonably expects to have, advisory privileges
38 with respect to the distribution or investment of amounts held in
39 the funds or accounts by reason of the donor's status as a donor.

(2) The Attorney General shall, pursuant to subdivision (b), adopt rules and regulations requiring that reports filed pursuant to this section by a donor-advised fund sponsor disclose information about individual funds or accounts maintained by the donor-advised fund sponsor that will help the Attorney General ascertain whether those funds or accounts are being properly administered. The information disclosed pursuant to the rules and regulations adopted by the Attorney General shall include, but not be limited to, any of the following:

(A) Whether the donor-advised fund sponsor has a publicly available policy with respect to donor-advised funds that are inactive, dormant, or do not make distributions during a specified period of time that does not exceed 36 months.

(B) A description of the donor-advised fund sponsor's policy for responding to funds described in subparagraph (A), including the manner in which the donor-advised fund sponsor monitors and enforces compliance, or a statement that no such policy is in effect.

(C) For the most recently completed accounting period, the value of assets invested by the donor-advised fund sponsor organization that were invested in mutual funds, exchange traded funds, or other investment vehicles or entities controlled by, controlling, or under common control with an entity that provides administrative or investment services to the donor-advised fund sponsor.

(3) *Information disclosed pursuant to paragraph (2) shall not include personal information that identifies or describes any individual donor or advisor to a donor-advised fund sponsor, including, but not limited to, the donor's or advisor's name, social security number, account number, address, telephone number, or email address.*

(4) (A) *A donor-advised fund sponsoring organization is exempt from the disclosure requirements in this subdivision in a given year if any of the following apply for that year:*

(i) *The sponsor holds less than three hundred million dollars (\$300,000,000) in total donor-advised fund assets.*

(ii) *The sponsor granted out more than 50 percent of the aggregate value of total assets across all donor-advised fund sponsors.*

1 (iii) *The sponsor grants more than 90 percent of distributed*
2 *funds to serve a geographically defined community smaller than*
3 *a state.*

4 (iv) *Of the sponsor's total distributed grants, more than 90*
5 *percent were issued to serve a geographically defined community*
6 *smaller than a state.*

7 (B) *A donor-advised fund sponsoring organization shall*
8 *self-certify to the Attorney General that they have met the*
9 *conditions described in subparagraph (A) in order to claim the*
10 *exemption in this paragraph.*

11 (5) *A donor-advised fund sponsoring organization shall be*
12 *subject to penalties equivalent to those imposed for failure to*
13 *comply with the requirements of this subdivision, as described in*
14 *Section 12591.1, if that organization does not disclose information*
15 *required by this subdivision and does either of the following:*

16 (i) *Fails to self-certify that the conditions described in*
17 *subparagraph (A) are met.*

18 (ii) *Self-certifies that the conditions described in subparagraph*
19 *(A) are met but does so erroneously or fraudulently.*