

ASSEMBLY, No. 3997

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 1, 2020

Sponsored by:

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

Co-Sponsored by:

**Assemblywomen McKnight, Murphy, Assemblyman Freiman and
Assemblywoman Reynolds-Jackson**

SYNOPSIS

Concerns certain annual filings by nonprofit corporations and charitable organizations.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/22/2020)

1 **AN ACT** concerning annual filings by nonprofit corporations and
 2 charitable organizations and amending N.J.S.15A:4-5 and
 3 P.L.1994, c.16.

4
 5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 6 *of New Jersey:*

7
 8 1. N.J.S.15A:4-5 is amended to read as follows:

9 15A:4-5. a. Every domestic corporation and every foreign
 10 corporation authorized to conduct activities in this State shall file in
 11 the office of the State Treasurer, within the time prescribed by this
 12 section, an annual report, executed on behalf of the corporation,
 13 setting forth:

14 (1) the name of the corporation and, in the case of a foreign
 15 corporation, the jurisdiction of its incorporation;

16 (2) the address, including the actual location as well as postal
 17 designation, if different, of the registered office of the corporation in
 18 this State, and the name of its registered agent in this State at that
 19 address, and, if a foreign corporation, the address of its main or
 20 headquarters office; and

21 (3) the names and addresses of the trustees and the officers of the
 22 corporation, which addresses shall be either the residence address of
 23 that person or other address where that person regularly receives mail
 24 and which is not the address of the corporation.

25 b. The State Treasurer shall designate a date for filing annual
 26 reports for each corporation required to submit a report pursuant to
 27 this section and shall annually notify the corporation of the date so
 28 designated not less than 60 days prior to that date. The corporation
 29 shall file the report within 30 days before or within 30 days after the
 30 date so designated. If the date so designated is not more than six
 31 months after the date on which an annual report pursuant to the
 32 provisions of prior law was filed or on which the certificate of
 33 incorporation became effective, the corporation shall not be required
 34 to file an annual report until one year after the first occurrence of the
 35 date so designated.

36 c. If the report is not filed for two consecutive years, the
 37 certificate of incorporation of the corporation or the certificate of
 38 authority of a foreign corporation shall, after written demand for the
 39 reports by the State Treasurer by certified mail addressed to the
 40 corporation at the last address appearing of record in the office of the
 41 State Treasurer, be revoked for the failure to file reports. No
 42 corporation shall be subject to the revocation of its certificate of
 43 incorporation or its certificate of authority if it shall, within 60 days
 44 after the written demand, file the reports required by law and pay to
 45 the State Treasurer the fee provided by law for the filing of each

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 report. Any corporation having its certificate of incorporation or its
2 certificate of authority revoked may cause a reinstatement of the
3 certificate upon payment to the State Treasurer of: the fee then
4 payable upon the filing of the certificate of incorporation; a current
5 annual report fee; and payment of a reinstatement filing assessment
6 as set forth in N.J.S. 15A:15-1. The reinstatement relates back to the
7 date of issuance of the proclamation revoking the certificate of
8 incorporation or the certificate of authority and shall validate all
9 actions taken in the interim. In the event that in the interim the
10 corporate name has become unavailable, the State Treasurer shall
11 issue the certificate upon, in the case of a domestic corporation, the
12 filing of an amendment to its certificate of incorporation to change
13 the corporate name to an available name, and, in the case of a foreign
14 corporation, the filing of an amended certificate of authority adopting
15 an alternate name. The State Treasurer shall provide the forms
16 necessary to effect annual report reinstatements.

17 d. The State Treasurer shall furnish annual report forms, shall
18 keep all the reports and shall prepare an alphabetical index thereof.
19 The reports and index shall be open to public inspection at proper
20 hours.

21 e. The State Treasurer shall allow any annual report that is
22 designated to be filed while Executive Order 103 of 2020 remains in
23 effect, or up to 180 days after its conclusion, to be filed up to 180
24 days after the conclusion of that executive order, without requiring
25 the corporation to pay any penalty or additional fee other than the
26 annual filing fee. The State Treasurer shall not require any
27 corporation to pay its filing fee in advance of the date the annual
28 report is filed pursuant to this subsection.

29 (cf: P.L.2019, c.149, s.4)

30

31 2. Section 6 of P.L.1994, c.16 (C.45:17A-23) is amended to read
32 as follows:

33 6. a. A charitable organization, unless exempted from
34 registration requirements pursuant to section 9 of this act, shall file a
35 registration statement with the Attorney General on forms prescribed
36 by the Attorney General.

37 b. It shall be unlawful for any charitable organization to solicit
38 contributions or have contributions solicited in its behalf before the
39 Attorney General has been given the opportunity to review the
40 registration statement pursuant to section 5 of this act. A renewal
41 statement must be filed annually within six months after the close of
42 the charitable organization's fiscal year. For good cause shown, the
43 Attorney General may extend the time for the annual filing of the
44 renewal statement and financial report for a period not to exceed 180
45 days, during which time the previous registration shall remain in
46 effect. The request for an extension shall be in writing and received
47 by the Attorney General before the filing deadline.

1 c. All registration statements shall be signed by two authorized
2 officers, including the chief fiscal officer of the organization, who
3 shall certify that information contained in the registration statements
4 is correct.

5 d. The Attorney General shall prescribe all fees for the filing of
6 all registration statements according to the provisions of this act. The
7 fees for the filing of registration statements by charitable
8 organizations may be graduated based upon the amount of
9 contributions received during the previous fiscal year. A parent
10 organization filing on behalf of one or more local units shall pay a
11 single annual registration fee for itself and a fee for each local unit
12 included in the registration statement.

13 e. The Attorney General shall allow any annual filing of a
14 renewal statement and financial report that is scheduled to be filed
15 while Executive Order 103 of 2020 remains in effect, or up to 180
16 days after its conclusion, to be filed up to 180 days after the
17 conclusion of that executive order, without requiring the organization
18 to pay any penalty or additional fee other than the annual filing fee.
19 The Attorney General shall not require any organization to pay a
20 filing fee in advance of the date the renewal statement and financial
21 report are filed pursuant to this subsection.

22 (cf: P.L.1994, c.16, s.6)

23
24 3. Section 7 of P.L.1994, c.16 (C.45:17A-24) is amended to read
25 as follows:

26 7. a. Every charitable organization operating or soliciting within
27 this State, except for those provided for in section 8 of this act or
28 exempt pursuant to section 9 of this act, shall file a long form
29 registration statement with the Attorney General.

30 b. The long form shall contain the following:

31 (1) The name of the organization and any other name or names
32 under which it intends to solicit contributions and the purposes for
33 which it was organized;

34 (2) The name, street address and telephone number of each
35 officer, director and trustee and each principal salaried executive
36 staff employee and whether the person has been adjudged liable in an
37 administrative or civil action, or convicted in a criminal action,
38 involving theft, fraud or deceptive business practices. For the
39 purposes of this paragraph:

40 (a) a plea of guilty, non vult, nolo contendere or any similar
41 disposition of alleged criminal activity shall be deemed a conviction;

42 (b) "each principal salaried executive staff employee" shall be
43 limited to no more than the five most highly compensated employees
44 in the organization; and

45 (c) a judgment of liability in an administrative or civil action shall
46 include, but not be limited to, any finding or admission that the
47 officer, director, trustee or principal salaried executive staff
48 employee engaged in an unlawful practice or practices related to the

1 solicitation of contributions or the administration of charitable assets,
2 regardless of whether that finding was made in the context of an
3 injunction, a proceeding resulting in the denial, suspension or
4 revocation of an organization's registration, consented to in an
5 assurance of voluntary compliance or any similar order or legal
6 agreement with any state or federal agency.

7 (3) A copy of the most recent Internal Revenue Service Form 990
8 and Schedule A (990) for every registrant if the organization filed
9 these forms;

10 (4) A clear description of the specific programs and charitable
11 purpose for which contributions will be used and a statement whether
12 such programs are planned or are in existence;

13 (5) A statement disclosing pertinent information concerning
14 whether any of the organization's officers, directors, trustees or
15 principal salaried executive staff employees as defined in
16 subparagraph (b) of paragraph (2) of subsection b. of this section:

17 (a) Are related by blood, marriage or adoption to each other or to
18 any officers, agents or employees of any fund raising counsel or
19 independent paid fund raiser under contract to the organization, or
20 are related by blood, marriage or adoption to any chief executive
21 employee, any other employee of the organization with a direct
22 financial interest in the transaction, or any partner, proprietor,
23 director, officer, trustee, or to any shareholder of the organization
24 with more than a two percent interest of any supplier or vendor
25 providing goods or services to the organization and, if so, the name
26 and business and home address and telephone number of each related
27 party; or

28 (b) Have a financial interest in any activity engaged in by a fund
29 raising counsel or independent paid fund raiser under contract to the
30 organization or any supplier or vendor providing goods or services to
31 the organization and, if so, the name and business address and
32 telephone number of each interested party.

33 (6) The amount of any grant or financial assistance from any
34 agency of government in its preceding fiscal year;

35 (7) A statement setting forth the place where and the date when
36 the organization was legally established and the form of the
37 organization;

38 (8) The principal street address and telephone number of the
39 organization and the address and telephone number of each office in
40 this State. If the organization does not maintain an office in this
41 State, the name and address of the individual having custody of its
42 financial records pertaining to operations or solicitations in this State
43 shall be disclosed;

44 (9) The name, street address and telephone number of each
45 affiliate which shares in the contributions or other revenue raised in
46 this State;

47 (10) The date when the organization's fiscal year ends;

48 (11) A statement whether:

- 1 (a) The organization is authorized by any other state to solicit
2 contributions and, if so, a listing of the states in which authorization
3 has been obtained;
- 4 (b) The organization is or has ever been enjoined in any
5 jurisdiction from soliciting contributions or has been found to have
6 engaged in unlawful practices in the solicitation of contributions or
7 the administration of charitable assets;
- 8 (c) The organization's registration has been denied, suspended or
9 revoked by any jurisdiction, together with the reasons for that denial,
10 suspension or revocation; and
- 11 (d) The organization has voluntarily entered into an assurance of
12 voluntary compliance agreement or any similar order or legal
13 agreement with any jurisdiction or federal agency or officer;
- 14 (12) Whether the organization intends to solicit contributions
15 from the general public; and
- 16 (13) Any other information as may be prescribed by rules adopted
17 by the Attorney General. In prescribing the requirements of the long
18 form, the Attorney General shall permit a charitable organization to
19 incorporate by reference any information reported by the
20 organization on its Service Form 990 and Schedule A (990).
- 21 c. With initial registration only, every charitable organization
22 required to file a long form registration shall also file a copy of the
23 organization's charter, articles of organization, agreement of
24 association, instrument of trust, constitution or other organizational
25 instrument and bylaws, and a statement setting forth the
26 organization's tax exempt status with copies of federal or state tax
27 exemption determination or exemption ruling letters; provided that
28 any changes in the accuracy of this information shall be reported to
29 the Attorney General pursuant to subsection e. of section 14 of this
30 act.
- 31 d. (1) Every charitable organization required to file a long form
32 registration shall file an annual financial report with the Attorney
33 General. The annual financial report shall include: a balance sheet;
34 a statement of support revenue, expenses and changes in fund
35 balance; a statement of functional expenses at least divided into
36 program, management, general, and fund raising; and such other
37 information as the Attorney General shall by rule require.
- 38 (2) The annual financial report of every charitable organization
39 which received gross revenue in excess of **【\$250,000】** \$1,000,000,
40 or any greater amount that the Attorney General may prescribe by
41 regulation during its most recently completed fiscal year shall be
42 accompanied by: (a) a financial statement prepared in accordance
43 with generally accepted accounting principles or other
44 comprehensive basis of accounting approved for use by the Attorney
45 General by regulation which has been audited in accordance with
46 generally accepted auditing standards by an independent certified
47 public accountant; and (b) any management letters prepared by the

1 auditor in connection with the audit commenting on the internal
2 accounting controls or management practices of the organization.

3 The annual financial reports of all organizations receiving more
4 than \$25,000 but less than **【\$250,000】** \$1,000,000, or any greater
5 amount that the Attorney General may prescribe by regulation shall
6 be certified by the organization's president or other authorized officer
7 of the organization's governing board and at the request of the
8 Attorney General, the organization shall submit: (a) a financial
9 statement prepared in accordance with generally accepted accounting
10 principles or other comprehensive basis of accounting approved for
11 use by the Attorney General by regulation which has been audited in
12 accordance with generally accepted auditing standards by an
13 independent certified public accountant; and (b) any management
14 letters prepared by the auditor in connection with the audit
15 commenting on the internal accounting controls or management
16 practices of the organization.

17 (3) The Attorney General may accept a copy of a current financial
18 report previously prepared by a charitable organization for another
19 state agency or officer in compliance with the laws of that state,
20 provided that the report filed with the other state agency or officer
21 shall be substantially similar in content to the report required by this
22 subsection.

23 (4) An independent member agency of a federated fund raising
24 organization shall independently comply with the provisions of this
25 subsection.

26 e. In order to register its qualified local units pursuant to
27 subsection d. of section 9 of this act, a parent organization registered
28 pursuant to this section shall include with its initial registration and
29 annual renewal statement a separate statement that provides the
30 following:

31 (1) The name, principal street address, and phone number of all
32 local units within this State that it is registering;

33 (2) The amount of gross contributions received by each such unit
34 and the purpose or purposes for which these funds were raised in the
35 preceding fiscal year; and

36 (3) A statement asserting that each such local unit has provided
37 the parent organization with a written statement reporting the
38 information included on its behalf and asserting that the local unit
39 meets all of the requirements of subsection d. of section 9 of this act.

40 f. Any management letters prepared by the auditor in connection
41 with the audit commenting on the internal accounting controls or
42 management practices of the organization submitted pursuant to
43 paragraph (2) of subsection d. of this section shall not be considered
44 a public record under P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001,
45 c.404 (C.47:1A-5 et al.), shall not be made available for public
46 inspection nor used for a purpose inconsistent with P.L.1994, c.16
47 (C.45:17A-18 et seq.), and shall be removed from the record in the
48 custody of the Attorney General at such time that such information is

1 no longer necessary for the enforcement of that act. The records
2 required pursuant to this section shall be maintained for a period of
3 at least three years after the end of the period of time to which they
4 relate.

5 (cf: P.L.2005, c.283, s.3)

6

7 4. This act shall take effect immediately.

8

9

10 STATEMENT

11

12 This bill concerns certain annual filings by nonprofit corporations
13 and charitable organizations.

14 The bill requires the State Treasurer to allow any annual report for
15 a nonprofit corporation that is designated to be filed while Executive
16 Order 103 of 2020 remains in effect, or up to 180 days after its
17 conclusion, to be filed up to 180 days after the conclusion of that
18 executive order, without requiring the corporation to pay any penalty
19 or additional fee other than the annual filing fee. The bill also
20 provides that the State Treasurer may not require any corporation to
21 pay its filing fee in advance of the date the annual report is filed.

22 The bill requires the Attorney General to allow any annual filing
23 of a renewal statement and financial report for a charitable
24 organization that is scheduled to be filed while Executive Order 103
25 of 2020 remains in effect, or up to 180 days after its conclusion, to
26 be filed up to 180 days after the conclusion of that executive order,
27 without requiring the organization to pay any penalty or additional
28 fee other than the annual filing fee. The bill also provides that the
29 Attorney General may not require any organization to pay a filing fee
30 in advance of the date the renewal statement and financial report are
31 filed.

32 This bill also changes the threshold at which a charitable
33 organization must submit certain audited financial statements and
34 management letters, from gross revenue in excess of \$250,000, or
35 any greater amount that the Attorney General may prescribe by
36 regulation, to gross revenue in excess of \$1,000,000, or any greater
37 amount that the Attorney General may prescribe by regulation.