

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 4635

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED DECEMBER 13, 2021

Sponsored by:

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

SYNOPSIS

Revises financial reporting requirements for charitable organizations; excludes non-monetary in-kind donations from gross revenue for purpose of reporting requirements.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Financial Institutions and Insurance Committee.



1 **AN ACT** concerning financial reporting requirements of charitable
2 organizations and amending P.L.1994, c.16.

3

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

6

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

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

13 b. The long form shall contain the following:

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

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

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

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

29 (c) a judgment of liability in an administrative or civil action
30 shall include, but not be limited to, any finding or admission that
31 the officer, director, trustee or principal salaried executive staff
32 employee engaged in an unlawful practice or practices related to the
33 solicitation of contributions or the administration of charitable
34 assets, regardless of whether that finding was made in the context of
35 an injunction, a proceeding resulting in the denial, suspension or
36 revocation of an organization's registration, consented to in an
37 assurance of voluntary compliance or any similar order or legal
38 agreement with any state or federal agency.

39 (3) A copy of the most recent Internal Revenue Service Form
40 990 and Schedule A (990) for every registrant if the organization
41 filed these forms;

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

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 (5) A statement disclosing pertinent information concerning
2 whether any of the organization's officers, directors, trustees or
3 principal salaried executive staff employees as defined in
4 subparagraph (b) of paragraph (2) of subsection b. of this section:
- 5 (a) Are related by blood, marriage or adoption to each other or
6 to any officers, agents or employees of any fund raising counsel or
7 independent paid fund raiser under contract to the organization, or
8 are related by blood, marriage or adoption to any chief executive
9 employee, any other employee of the organization with a direct
10 financial interest in the transaction, or any partner, proprietor,
11 director, officer, trustee, or to any shareholder of the organization
12 with more than a two percent interest of any supplier or vendor
13 providing goods or services to the organization and, if so, the name
14 and business and home address and telephone number of each
15 related party; or
- 16 (b) Have a financial interest in any activity engaged in by a fund
17 raising counsel or independent paid fund raiser under contract to the
18 organization or any supplier or vendor providing goods or services
19 to the organization and, if so, the name and business address and
20 telephone number of each interested party.
- 21 (6) The amount of any grant or financial assistance from any
22 agency of government in its preceding fiscal year;
- 23 (7) A statement setting forth the place where and the date when
24 the organization was legally established and the form of the
25 organization;
- 26 (8) The principal street address and telephone number of the
27 organization and the address and telephone number of each office in
28 this State. If the organization does not maintain an office in this
29 State, the name and address of the individual having custody of its
30 financial records pertaining to operations or solicitations in this
31 State shall be disclosed;
- 32 (9) The name, street address and telephone number of each
33 affiliate which shares in the contributions or other revenue raised in
34 this State;
- 35 (10) The date when the organization's fiscal year ends;
- 36 (11) A statement whether:
- 37 (a) The organization is authorized by any other state to solicit
38 contributions and, if so, a listing of the states in which authorization
39 has been obtained;
- 40 (b) The organization is or has ever been enjoined in any
41 jurisdiction from soliciting contributions or has been found to have
42 engaged in unlawful practices in the solicitation of contributions or
43 the administration of charitable assets;
- 44 (c) The organization's registration has been denied, suspended
45 or revoked by any jurisdiction, together with the reasons for that
46 denial, suspension or revocation; and

1 (d) The organization has voluntarily entered into an assurance of
2 voluntary compliance agreement or any similar order or legal
3 agreement with any jurisdiction or federal agency or officer;

4 (12) Whether the organization intends to solicit contributions
5 from the general public; and

6 (13) Any other information as may be prescribed by rules
7 adopted by the Attorney General. In prescribing the requirements
8 of the long form, the Attorney General shall permit a charitable
9 organization to incorporate by reference any information reported
10 by the organization on its Service Form 990 and Schedule A (990).

11 c. With initial registration only, every charitable organization
12 required to file a long form registration shall also file a copy of the
13 organization's charter, articles of organization, agreement of
14 association, instrument of trust, constitution or other organizational
15 instrument and bylaws, and a statement setting forth the
16 organization's tax exempt status with copies of federal or state tax
17 exemption determination or exemption ruling letters; provided that
18 any changes in the accuracy of this information shall be reported to
19 the Attorney General pursuant to subsection e. of section 14 of this
20 act.

21 d. (1) Every charitable organization required to file a long
22 form registration shall file an annual financial report with the
23 Attorney General. The annual financial report shall include: a
24 balance sheet; a statement of support revenue, expenses and
25 changes in fund balance; a statement of functional expenses at least
26 divided into program, management, general, and fund raising; and
27 such other information as the Attorney General shall by rule
28 require.

29 (2) The annual financial report of every charitable organization
30 which received gross revenue in excess of ~~[\$250,000]~~ \$1,000,000
31 in monetary donations, or any greater amount that the Attorney
32 General may prescribe by regulation, during its most recently
33 completed fiscal year shall be accompanied by: (a) a financial
34 statement prepared in accordance with generally accepted
35 accounting principles or other comprehensive basis of accounting
36 approved for use by the Attorney General by regulation which has
37 been audited in accordance with generally accepted auditing
38 standards by an independent certified public accountant; and (b) any
39 management letters prepared by the auditor in connection with the
40 audit commenting on the internal accounting controls or
41 management practices of the organization.

42 The annual financial reports of all organizations receiving more
43 than \$25,000 but less than ~~[\$250,000]~~ \$1,000,000 in monetary
44 donations, or any greater amount that the Attorney General may
45 prescribe by regulation, shall be certified by the organization's
46 president or other authorized officer of the organization's governing
47 board and at the request of the Attorney General, the organization

1 shall submit: (a) a financial statement prepared in accordance with
2 generally accepted accounting principles or other comprehensive
3 basis of accounting approved for use by the Attorney General by
4 regulation which has been audited in accordance with generally
5 accepted auditing standards by an independent certified public
6 accountant; and (b) any management letters prepared by the auditor
7 in connection with the audit commenting on the internal accounting
8 controls or management practices of the organization.

9 Notwithstanding any other provision of law to the contrary, non-
10 monetary donations in the form of in-kind contributions directly
11 related to any stated purpose or mission of the charitable
12 organization, including food for food pantries or food banks,
13 supplies for shelters, and such other forms of in-kind contributions
14 as may be permitted by the Attorney General, shall not constitute
15 gross revenue with respect to the requirement of an annual financial
16 report with a financial statement audited by an independent certified
17 public accountant under this subsection. In addition to any other
18 requirement under this subsection, annual financial reports and
19 statements shall include a summary of all non-monetary in-kind
20 contributions and the value attributed to those contributions.

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

27 (4) An independent member agency of a federated fund raising
28 organization shall independently comply with the provisions of this
29 subsection.

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

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

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

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

45 f. Any management letters prepared by the auditor in
46 connection with the audit commenting on the internal accounting
47 controls or management practices of the organization submitted

1 pursuant to paragraph (2) of subsection d. of this section shall not
2 be considered a public record under P.L.1963, c.73 (C.47:1A-
3 1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et al.), shall not be made
4 available for public inspection nor used for a purpose inconsistent
5 with P.L.1994, c.16 (C.45:17A-18 et seq.), and shall be removed
6 from the record in the custody of the Attorney General at such time
7 that such information is no longer necessary for the enforcement of
8 that act. The records required pursuant to this section shall be
9 maintained for a period of at least three years after the end of the
10 period of time to which they relate.

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

12

13 2. N.J.S.15A:4-5 is amended to read as follows:

14 15A:4-5. a. Every domestic corporation and every foreign
15 corporation authorized to conduct activities in this State shall file in
16 the office of the State Treasurer, within the time prescribed by this
17 section, an annual report, executed on behalf of the corporation,
18 setting forth:

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

21 (2) the address, including the actual location as well as postal
22 designation, if different, of the registered office of the corporation
23 in this State, and the name of its registered agent in this State at that
24 address, and, if a foreign corporation, the address of its main or
25 headquarters office; and

26 (3) the names and addresses of the trustees and the officers of
27 the corporation, which addresses shall be either the residence
28 address of that person or other address where that person regularly
29 receives mail and which is not the address of the corporation.

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

41 c. If the report is not filed for two consecutive years, the
42 certificate of incorporation of the corporation or the certificate of
43 authority of a foreign corporation shall, after written demand for the
44 reports by the State Treasurer by certified mail addressed to the
45 corporation at the last address appearing of record in the office of
46 the State Treasurer, be revoked for the failure to file reports. No
47 corporation shall be subject to the revocation of its certificate of

1 incorporation or its certificate of authority if it shall, within 60 days
2 after the written demand, file the reports required by law and pay to
3 the State Treasurer the fee provided by law for the filing of each
4 report. Any corporation having its certificate of incorporation or its
5 certificate of authority revoked may cause a reinstatement of the
6 certificate upon payment to the State Treasurer of: the fee then
7 payable upon the filing of the certificate of incorporation; a current
8 annual report fee; and payment of a reinstatement filing assessment
9 as set forth in N.J.S. 15A:15-1. The reinstatement relates back to
10 the date of issuance of the proclamation revoking the certificate of
11 incorporation or the certificate of authority and shall validate all
12 actions taken in the interim. In the event that in the interim the
13 corporate name has become unavailable, the State Treasurer shall
14 issue the certificate upon, in the case of a domestic corporation, the
15 filing of an amendment to its certificate of incorporation to change
16 the corporate name to an available name, and, in the case of a
17 foreign corporation, the filing of an amended certificate of authority
18 adopting an alternate name. The State Treasurer shall provide the
19 forms necessary to effect annual report reinstatements.

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

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

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

33

34 3. Section 6 of P.L.1944, c.16 (C.45:17A-23) is amended to
35 read as follows:

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

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

- 1 180 days, during which time the previous registration shall remain
- 2 in effect. The request for an extension shall be in writing and
- 3 received by the Attorney General before the filing deadline.
- 4 c. All registration statements shall be signed by two authorized
- 5 officers, including the chief fiscal officer of the organization, who
- 6 shall certify that information contained in the registration
- 7 statements is correct.
- 8 d. The Attorney General shall prescribe all fees for the filing of
- 9 all registration statements according to the provisions of this act.
- 10 The fees for the filing of registration statements by charitable
- 11 organizations may be graduated based upon the amount of
- 12 contributions received during the previous fiscal year. A parent
- 13 organization filing on behalf of one or more local units shall pay a
- 14 single annual registration fee for itself and a fee for each local unit
- 15 included in the registration statement.
- 16 e. The Attorney General shall allow any annual filing of a
- 17 renewal statement and financial report that is scheduled to be filed
- 18 while Executive Order 103 of 2020 remains in effect, or up to 180
- 19 days after its conclusion, to be filed up to 180 days after the
- 20 conclusion of that executive order, without requiring the
- 21 organization to pay any penalty or additional fee other than the
- 22 annual filing fee. The Attorney General shall not require any
- 23 organization to pay a filing fee in advance of the date the renewal
- 24 statement and financial report are filed pursuant to this subsection.
- 25 (cf: P.L.1994, c.16, s.6)
- 26
- 27 4. This act shall take effect immediately.