

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

CHAPTER 4. SUPERVISION OF TRUSTEES AND FUNDRAISERS FOR CHARITABLE PURPOSES ACT and CHAPTER 4.6. NONPROFIT RAFFLE PROGRAM

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

Background

Supervision of Trustees and Fundraisers for Charitable Purposes Act - The Attorney General has primary responsibility for supervising charities and charitable trusts in California under the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Act). (Gov. Code, § 12598, subd. (a).) This involves protecting charitable assets and donations, and ensuring compliance with trust documents, articles of incorporation, and other governing documents of a charitable organization. In doing so, the Attorney General investigates charities, charitable trusts, and fundraising professionals, and brings enforcement actions.

Specifically, the Act governs charitable corporations, unincorporated associations, trustees, commercial fundraisers, fundraising counsel, commercial coventurers, and other legal entities holding or soliciting property for charitable purposes. The Act requires these entities to register and file reports with the Attorney General's Registry of Charitable Trusts. (Gov. Code, §§ 12585, subd. (a), 12586, subd. (a), 12599, subds. (b) & (c), § 12599.1, subds. (c) & (d), and 12599.2.) The Attorney General has authority to make rules and regulations regarding the time for filing reports, the content of such reports, and the manner of executing and filing them. (Gov. Code, § 12586, subd. (b).)

Nonprofit Raffle Program - The Attorney General also has primary responsibility for the Nonprofit Raffle Program governed by Penal Code section 320.5. In California, charities and certain other private nonprofit organizations may conduct raffles to raise funds for beneficial or charitable purposes. This exception to the constitutional prohibition against lotteries requires that at least 90 percent of the gross receipts from a raffle go directly to beneficial or charitable purposes in California. Penal Code section 320.5 governs which organizations may hold raffles and how the raffles must be conducted. The Attorney General has authority to implement the Nonprofit Raffle Program through regulations. (Pen. Code, § 320.5, subd. (h)(4).)

Registry of Charitable Trusts - The Act establishes the Registry of Charitable Trusts (Registry) maintained by the Attorney General in the Department of Justice (Department). (Gov. Code, § 12587.1.) The Registry is responsible for administering registration and reporting requirements. All charitable trustees and fundraising professionals, as well as nonprofit organizations that conduct raffles, must register and file financial reports with the Registry. The Registry publishes these filings on the Attorney General's website and provides assistance to

charities by responding to inquiries made by telephone, emails and correspondence. The Registry also provides assistance by offering educational guides, publications and webinars. The Registry has five program sections which oversee the filing of registration, renewal or financial forms, and collection of filing fees. These programs are Initial Registration (processes initial registration and filing fees), Renewals (processes annual renewal registration reports and filing fees), Delinquency (enforcement of timely annual renewal registration reports and collects filing and late fees), Commercial Fundraising (registers, collects filing fees and annual reports), and Raffles (registers, collects filing reports and raffle registration fees). Registration, Renewals and Delinquency are highly integrated and interdependent. The two remaining programs, Raffles and Commercial Fundraising, are independent programs.

Problem

The Department has authority to collect registration fees, renewal fees, late fees and other fees. (Gov. Code, §§ 12580 et seq., and 12587.1, Pen. Code, § 320.5.) Fee revenues pay for public access to reports filed with the Department, and for enforcement of the Act's registration and reporting provisions. (See Gov. Code, § 12587.1, subds. (c) and (d).) The Department last updated the fee schedule over 15 years ago. Since that time the number of charities operating in California increased from approximately 108,276 to over 235,000. In order for the Registry to pay existing recurring expenses that exceed current revenue; fully execute oversight responsibilities, both with the timely intake of forms/fees and the follow up enforcement for compliance violations; and enable the upgrade investment in new technology (the current Registry system is 13 years old and needs to be upgraded or replaced), a fee increase is necessary. The Department's current fee revenue does not adequately address the Registry's increased workload or support the technology requirements and personnel needed to administer and enforce the Act and protect charitable assets in California.

BENEFITS ANTICIPATED FROM REGULATORY ACTION

The objective of the proposed rulemaking is to increase registration fees to maintain and operate a solvent program, pay for updates to the Department's Registry website where reports are made available to the public, and improve outreach and enforcement of the Act's registration and reporting requirements.

Charities represent an important economic sector in California and significantly impact the communities they serve. California charities generate \$273.7 billion in annual revenue and hold \$436.7 billion in assets.¹ An increase in registration fees will benefit the health and welfare of California residents and promote fairness, social equity, and transparency by improving online public access to reports filed with the Registry, and by dedicating more staff and resources to investigating and prosecuting mismanagement and diversion of charitable assets. The increased enforcement activity will safeguard, preserve and recover charitable assets for the benefit of California residents who receive assistance from charitable organizations.

¹ California Association of Nonprofits & The Nonprofit Institute, Causes Count: The Economic Power of California's Nonprofit Sector (2019).

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION

CCR, Title 11, Chapter 4

1. § 300. Initial Registration.

Section 300 governs initial registration requirements. This proposed action increases the initial registration fee from \$25 fee to \$50. This fee increase is necessary as it will allow the Department to update its website and expand its enforcement activities. The Department anticipates the initial registration fee increase for charities will result in additional revenues of approximately \$126,250. The calculation for the revenue increase takes into account the annual average number of initial registrants, which is approximately 5,050 registrants.

Subdivision (b) incorporates and references the Initial Registration Form, Form CT-1. This proposed action makes the following changes to the form:

- Making a new proposed revision date of 02/2021.
- Changing the \$25 fee in Part B, to \$50.
- Changing the \$25 fee on page 5, under Part B Instructions, to \$50.
- Deleting the word “generally” under box J and on page 7 of the Instructions, so that the last sentence reads: “Organizations with less than \$50,000 in total revenue are required to file Form CT-TR-1.”

These changes to Form CT-1 are necessary to conform to the proposed fee increase. Also, the change in box J and page 7 deleting the word “generally” is necessary to clarify existing reporting requirements.

2. § 301. Periodic Written Reports; § 303. Filing Forms; § 305. Annual Filing of Reports.

Sections 301, 303 and 305 govern the filing of periodic written reports. These sections incorporate and reference the Annual Registration Renewal Fee Report, Form RRF-1. This proposed action makes the following changes to the form:

- Making a new proposed revision date of 02/2021.
- Updating the table on page 1, under “ANNUAL REGISTRATION RENEWAL FEE SCHEDULE” and the list on page 3 under the section “ANNUAL REGISTRATION RENEWAL FEE” to reflect the following changes:

<u>Gross Annual Revenue</u>	<u>Fee</u>
Less than \$50,000	\$25
Between \$50,000 and \$100,000	\$50
Between \$100,001 and \$250,000	\$75
Between \$250,001 and \$1 million	\$100
Between \$1,000,001 and \$5 million	\$200
Between \$5,000,001 and \$20 million	\$400
Between \$20,000,001 and \$100 million	\$800
Between \$100,000,001 and \$500 million	\$1,000
Greater than \$500 million	\$1,200

These changes to Form RRF-1 are necessary to conform to the proposed fee increases described in Section 311. These increases, described in more detail below, are necessary to allow the Department to update its website, expand its enforcement activities, and pay recurring expenses that exceed current revenue.

- The two other changes to the Form RRF-1 relate to instructions for organizations filing the Form 990-PF, under Part A, “Program Expenses” and “Total Expenses” on page 4 of the Form RRF-1.
 - The first change corrects a reference to Form 990-PF. For an entity filing a Form 990-PF, the Program Expenses should come from Part 1, line 26, column (d). Some organizations only issue grants and gifts, and so those program expenses would not be accurately reflected in the current instructions and summary information input on Form RRF-1 as they fall under line 25.

This change is necessary because the line 24 reference in the current instructions would only include operating and administrative expenses, which may not include some program expenses, such as the Contributions, Gifts, and Gifts Paid referenced in line 25. This change is also necessary to enhance compliance by registrants by making the form easier to understand and will increase transparency and oversight by ensuring that the correct information is being reported.

- The second change adds more detail to a Form 990-PF reference. The current instructions for Part A, “Total Expenses” are correct. However, a change is being added to reference the appropriate column of the Form 990-PF, specifically, line 26, column (a).

This change is also necessary to enhance compliance by registrants by making the form easier to understand and will increase transparency and oversight by ensuring that the correct information is being reported.

3. § 308. Registration, Annual Filing, and Notice Requirements for Commercial Fundraisers for Charitable Purposes, Fundraising Counsel for Charitable Purposes, and Commercial Coventurers.

Section 308 governs registration requirements for commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, and commercial coventurer that are subject to the Act. This proposed action increases the registration fee for these entities from \$350 to \$500 in subdivisions (a)(2), (b)(2) and (c)(2). This fee increase is necessary as it will allow the Department to update its website, improve its enforcement of registration and reporting requirements, and pay existing recurring expenses that exceed current revenue. In the last five years, the Registry has experienced an increase in web-based solicitation by commercial fundraisers, and more Registry and legal staff and resources are needed to ensure these fundraisers are registered and filing the appropriate notice of intent forms and annual reports. The Department anticipates the registration fee increase for fundraising professionals will result in additional revenues of approximately \$121,650. The calculation for the revenue increase takes into account the annual average number of registrants, which is approximately 240 commercial fundraisers for charitable purposes, 515 fundraising counsel for charitable purposes, and 56 commercial coventurers.

Section 308 also incorporates and references the Commercial Fundraiser for Charitable Purposes Annual Registration Form, Form CT-1CF, the Fundraising Counsel for Charitable Purposes Annual Registration Form, Form CT-3CF, and the Commercial Coventurer Annual Registration Form, Form CT-5CF in subdivisions (a)(1), (b)(1), (c)(1). This proposed action makes changes to the forms as described below.

The changes to Form CT-1CF include:

- Making a new proposed revision date of 02/2021.
- Updating the fee from \$350 to \$500 on page 1, and on page 4, which is necessary to conform to the change in subdivision (a)(2).

The changes to Form CT-3CF include:

- Making a new proposed revision date of 02/2021.
- Updating the fee from \$350 to \$500 on page 1, and on page 4, which is necessary to conform to the change in subdivision (b)(2).

The changes to Form CT-5CF include:

- Making a new proposed revision date of 02/2021.
- Updating the fee from \$350 to \$500 on page 1, and on page 4, which is necessary to conform to the change in subdivision (c)(2).

The changes to Form CT-1CF, Form CT-3CF, and Form CT-5CF, are necessary to conform to the proposed fee increases.

4. § 311. Annual Registration Fee.

Section 311 sets the initial and annual registration fees. This proposed action increases existing fees.

Subdivision (a)(1) is amended to reflect an increase in the initial registration fee from \$25 to \$50. This change is necessary to conform to proposed change to the fee in Section 300.

Subdivision (a)(2) is amended to reflect increases in the annual registration renewal fee. The renewal fee is a sliding scale fee based on the gross annual revenue of the organization—the higher the gross revenues, then the higher the renewal fee. The table below describes the existing fee, the proposed fee, and the resulting fee increase:

Gross Annual Revenue	Existing Fee	Proposed Fee	Increase
Less the \$50,000 Filers			
Less than \$25,000	\$0	\$25	\$25
Between \$25,000 and \$50,000	\$25	\$25	\$0
Between \$50,000 and \$100,000 Filers			
Between \$50,000 and \$100,000	\$25	\$50	\$25
Between \$100,001 and \$250,000 Filers			
Between \$100,001 and \$250,000	\$50	\$75	\$25
Between \$250,001 and \$1 million Filers			
Between \$250,001 and \$1 million	\$75	\$100	\$25
Between \$1,000,001 and \$5 million Filers			
Between \$1,000,001 and \$5 million	\$150	\$200	\$50
Between \$5,000,001 and \$20 million Filers			
Between \$5,000,001 and \$10 million	\$150	\$400	\$250
Between \$10,000,001 and \$20 million	\$225	\$400	\$175
Between \$20,000,001 and \$100 million Filers			
Between \$20,000,001 and \$50 million	\$225	\$800	\$575
Between \$50,000,001 and \$100 million	\$300	\$800	\$500
Between \$100,000,001 and \$500 million Filers			
Between \$100,000,001 and \$500 million	\$300	\$1,000	\$700
Greater than \$500 million Filers			
Greater than \$500 million	\$300	\$1,200	\$900

The Department proposes to increase fees for charities that currently pay no annual filing fees as these charities tend to need more assistance from Registry staff in their filing requirements to maintain their status as current in their registration and reporting. The sliding scale fee is appropriate because the Department uses fewer resources when auditing, investigating and prosecuting smaller organizations, and uses more resources when it focuses enforcement activities on larger organizations. Also, larger organizations have more resources to pay a higher fee, and the higher fee is a smaller percentage of their overall revenue.

The Department anticipates the renewal registration fee increase for charities will result in additional revenues of approximately \$3,775,300. The calculation for the revenue increase takes into account the annual average number of registrants, which is approximately 83,000, and the percentage of registrants that have a gross annual revenue of less than \$1 million, which is approximately 84 percent. This fee increase is necessary as it will allow the Department to update its website, improve its outreach services, expand its enforcement activities, and pay existing recurring expenses that exceed current revenue.

CCR, Title 11, Chapter 4.6

1. § 411. Definitions.

Section 411 defines terms applicable to the Nonprofit Raffle Program regulations. Subdivision (i) incorporates by reference the Application for Registration/Nonprofit Raffle Program Form CT-NRP-1. This proposed action makes one minor technical change to update the revision date of the form. This proposed action also amends the form to update the fee from \$20 to \$30 on pages 1 and 3 of the CT-NRP-1. This change is necessary to conform to the change proposed in section 418.

2. § 415. Registration.

Section 415 requires eligible organizations to register with the Department prior to holding a raffle. This section incorporates by reference Form CT-NRP-1. This proposed action makes one minor technical change to update the revision date of the form. This proposed action also amends the form to update the fee from \$20 to \$30 on pages 1 and 3 of the CT-NRP-1. This change is necessary to conform to the change proposed in section 418.

3. § 418. Fee for Registration.

Section 418 sets the registration fee eligible organizations must pay before holding a raffle. This proposed action increases the registration fee from \$20 to \$30. This change is necessary as it allows the Department to expand its enforcement activities related to Penal Code section 320.5. The Department anticipates the registration fee increase for nonprofit raffles will result in additional revenues of approximately \$52,460. The calculation for the revenue increase considers the annual average number of registrants, which is approximately 5,246 registrants.

Estimated Aggregate Revenues Resulting from Fee Increases

The aggregate revenue resulting from the fee will not exceed the Department's costs to upgrade the Registry website and expand its enforcement activities. As reflected in the table below, the Department anticipates the aggregate revenues resulting from the proposed fee increases to be approximately \$4,075,660.

<u>Fee</u>	<u>Estimated Revenue Increase</u>
Initial Registration Fee (Charities)	\$126,250
Renewal Registration Fees (Charities)	\$3,775,300
Registration Fees (Fundraising Professionals)	\$121,650
Registration Fees (Nonprofit Raffles)	\$52,460
Total approximate amount of revenue increase:	\$4,075,660

The Department anticipates that its approximate costs to upgrade the Registry website/case management system and expand its outreach and enforcement activities will be as described below:

Total approximate new recurring costs:	\$4,135,053
Program Deficit (average)	\$602,667
New Program Costs	\$3,532,386
Additional Staffing	\$3,500,000
Software Licensing/Data processing	\$32,386
Total approximate one-time costs:	\$899,500
Website/Case Management related upgrade costs	\$549,500
Other costs	\$350,000
Office reconfiguration costs/One Time	

Fee increases will allow the Department to accomplish the following:

- Pay existing recurring expenses that exceed current revenue;
- Continued investment in a technology upgrade;
- Improved timely service to the public;
- Expanded outreach to optimize compliance objectives pertaining to delinquent and unregistered charities;
- Ensure equity and balance across all charity revenue tiers (currently over 40% of the registered charities do not pay annual renewal fees due to their annual gross revenue being below a threshold); and
- Maintain a net positive revenue/expense balance.

For staffing costs, the Department will submit a request for spending authority to hire additional Registry, legal and audit staff. The total estimate for additional staffing is \$3,500,000. The Department seeks to hire two staff managers, ten staff analysts and one office technician. The Department also seeks to hire one supervising attorney, three staff attorneys, two auditors and one legal analyst to support the Registry's enforcement actions. The staffing costs will initially be lower in the first two fiscal years to allow time for hiring and to pay one-time technology and office reconfiguration costs.

The Registry's workload has increased significantly in the last few years. Every month, the Secretary of State (SOS) authorizes the formation of 800 new charities. At current staff levels, the Registry can only process 468 applications a month. While the Registry has reduced the processing time for initial registration from 120-160 days to 45 days, based on information from SOS and Franchise Tax Board, 123,000 unregistered nonprofit organizations are currently operating in California. Charities that are sent Notices to Register often respond with filings that also include delinquent filings for previous years of operating without registering. Increased initial and renewal fees will provide the necessary resources to reach out to unregistered organizations and increase the number of applications processed monthly. Since the public relies on the Registry's website to provide relevant information on nonprofits, reducing lag time between the Registry's receipt of information and its ability to act on and post that information is important.

There is also an increased need for additional legal and audit resources to support the Registry. The Department has authority to deny, suspend and revoke the registrations of fundraising and charitable organizations that fail to comply with their annual registration and reporting requirements. Likewise, the Department has authority to file cease and desist orders, administrative and civil actions against noncompliant organizations. Charities seeking to challenge the Department's actions are entitled to file administrative appeals. (Cal. Code Regs., tit.11, §§ 999.6-999.9.5.) In the last five years, the Department has experienced an increase in both administrative enforcement actions and appeals. There has also been an increase in online fundraising, including illegal raffle tickets sold online, and the Department seeks to hire additional attorneys to address these new fundraising vehicles.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department concludes it is unlikely that the proposal will (1) create or eliminate jobs within the state, (2) will create new businesses or eliminate existing businesses within the state, or (3) will result in the expansion of businesses currently doing business within the state. This assessment is based on the nominal amount of the proposed fee increase as compared to the gross revenues of the affected entities. The Department anticipates that the fee increases will have little to no effect on the current operations of the affected entities.

The Department also concludes that:

(1) An increase in registration fees will benefit the health and welfare of California residents and promote fairness, social equity, and transparency by improving online public access to reports

filed with the Registry, and by dedicating more staff and resources to investigating and prosecuting mismanagement and diversion of charitable assets. The increased outreach and enforcement activity will safeguard, preserve and recover charitable assets for the benefit of California residents who receive assistance from charitable organizations.

(2) The proposal would not benefit worker safety because these regulations and accompanying form changes do not impact worker safety.

(3) The proposal would not benefit the state's environment because these regulations and accompanying form changes do not impact the state's environment.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR SIMILAR DOCUMENTS RELIED UPON

Other than the reports filed with the Registry, the Department did not rely on any technical, theoretical, or empirical studies, reports or similar documents in proposing the regulations.

EVIDENCE SUPPORTING DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the proposed action would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Department does not anticipate the modest fee increases to have a significant effect on the operations, personnel levels, gross revenues or expenditures of any registrants, including registrants that are business entities.

The initial registration fees for charities and the fees for nonprofit raffles are nominal amounts. The registration renewal fees for charities, representing the most significant fee increases, are sliding scale fees based on annual gross revenues. The increase in the renewal fee for approximately 84 percent of the charities with annual revenues of less than \$1 million is a nominal amount, and charities with \$25,001-\$49,999 in gross revenues will not even be affected. For the remaining higher-funded charities, the increase in the renewal fee is a small percentage of their annual gross revenue.

With respect to commercial fundraisers, fundraising counsel, and commercial coventurers, the \$150 fee increase will have a slight impact. The impact, however, will not have a significant effect on commercial fundraisers and commercial coventurers, which are large businesses that typically generate significant revenue from their solicitation campaigns. From 2014 through 2018, the revenue generated from general fundraising has increased from \$502.9 million to \$810.4. Although fundraising counsels tend to be smaller businesses, the statute already provides an exemption from registration for those with annual gross revenues that are less than \$25,000.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department finds that no reasonable alternatives were presented to, or considered by, the Department that would lessen any adverse impact on small business.

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

The Department finds that no alternatives were presented to, or considered by, the Department that would be more effective in carrying out the purpose of the proposed regulation or would be as effective and less burdensome to affected private persons than the proposed regulation.

Performance Standard as Alternative:

The purpose of this proposed action is to increase fees to recover Department costs associated with the oversight of charitable assets in California. It is necessary that specific action be taken to recover those costs.