

October __, 2015

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE**VIA MESSENGER**Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: *Charity Care Act of 2016*

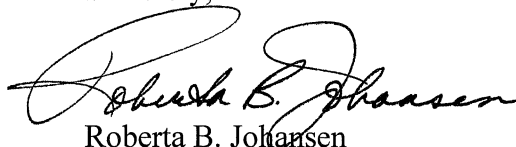
Dear Ms. Johansson:

In accordance with the requirements of Elections Code section 9001(a), I request that the Attorney General prepare a circulating title and summary of the chief purpose and points of the initiative measure entitled the "Charity Care Act of 2016". The text of the measure, a check for \$200.00, and the certifications required by Elections Code sections 9001 and 9608 are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

Karen Getman
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Sincerely,


Roberta B. JohansenEnclosures
(00260815)

CHARITY CARE ACT OF 2016

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure amends and adds sections to the Corporations Code and the Revenue and Taxation Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout~~ type and new provisions proposed to be added are printed in *italic* type to indicate that they are new.

SECTION 1. Name.

This act shall be known as the "Charity Care Act of 2016."

SEC. 2. Findings and Purpose.

This act, adopted by the people of the State of California, makes the following Findings and has the following Purpose:

A. The People make the following findings:

- (1) Access to health care services is of vital concern to the people of this State.
- (2) Although counties provide certain health care services to needy patients, the counties are not fully able to serve the public's need for affordable health care.
- (3) Private nonprofit hospitals currently meet certain needs of needy patients through charity care and provision of discounted health care services. Public recognition of the unique role of nonprofit hospitals has resulted in favorable tax treatment of the hospitals, which is a significant benefit for those hospitals. In exchange, nonprofit hospitals assume a social obligation to further the public interest in ensuring that needy patients continue to have access to charity care and discounted health care services.
- (4) Existing requirements of law do not adequately ensure that nonprofit hospitals provide charity care to the communities they serve in amounts that are appropriate in light of the significant benefits the hospitals receive from the State. Nor do existing requirements of law adequately identify standards for appropriate amounts of charity care and discounted health care services that nonprofit hospitals should provide in exchange for the benefits they receive from the State.

B. It is the purpose of this Act to ensure that nonprofit hospitals that receive significant benefits from the State, including favorable tax treatment, provide appropriate levels of charity care and discounted health care services to needy patients.

SEC. 3.

Chapter 9.5 (commencing with Section 5940) of the Corporations Code is added to read:

5940. Definitions. For the purposes of this chapter:

(a) "Affiliated health care service plan" means a health care service plan licensed under Section 1353 of the Health and Safety Code that in a "nonprofit health system's" most recently concluded fiscal year was the primary payer for 75 percent or more of all annual inpatient discharges from "nonprofit hospitals" that were part of the nonprofit health system on the date of the discharge, excluding inpatient discharges where the "primary payer" was Medicare, Medi-Cal, or a County Indigent program (pursuant to Section 1700 of the Welfare and Institutions Code), where the patient was a self-pay patient (as that term is defined in subdivision (f) of Section 127400 of the Health and Safety Code), or where the care was provided as unreimbursed "charity care."

(b) "Charity care" means the unreimbursed cost to a nonprofit hospital of:

- (1) providing, funding, or otherwise financially supporting health care services or items on an inpatient or outpatient basis to "needy patients";*
- (2) providing, funding, or otherwise financially supporting health care services or items provided to needy patients through other nonprofit or public outpatient clinics, hospitals, or health care organizations; and/or*
- (3) providing, funding, or otherwise financially supporting the following community benefits, provided that the provision, funding or financial support of such benefits is demonstrated to reduce community health care costs: vaccination programs and services for low-income families; chronic illness prevention programs and services; nursing and caregiver training; home-based health care programs for low-income families; exercise and/or nutrition programs for low-income families; or community-based mental health outreach and assessment programs for low-income families. For purposes of this paragraph, "low-income families" means families or individuals with income less than or equal to 200 percent of the federal poverty level.*

Charity care does not include the cost to a nonprofit hospital of paying any taxes or other governmental assessments, uncollected fees, or accounts written off as bad debt.

(c) "Contributions" means the dollar value of cash donations and the fair market value at the time of donation of in-kind donations to the nonprofit hospital from individuals, organizations, or other entities. Contributions does not include the value of a donation designated or otherwise restricted by the donor for purposes other than charity care.

(d) "Integrated nonprofit health system" means any "nonprofit health system" and affiliated health care service plan that satisfies both of the following requirements for the full fiscal year:

- (1) The nonprofit health system and affiliated health care service plan are owned, operated, or substantially controlled by the same person or persons or other legal entity or entities, including but not limited to by a shared corporate parent.*

(2) *The affiliated health care service plan is jointly, or jointly and severally, liable with the nonprofit health system or any one or more nonprofit hospital that is part of the nonprofit health system, through a master indenture or other agreement or agreements, for one or more debt obligations, including but not limited to loans, leases, commercial bonds, municipal bonds, or other debt instruments owed to a third party outside the nonprofit health system, if the debt obligations individually or collectively are material under generally accepted accounting principles to any financial statement of the affiliated health care service plan, the nonprofit health system, or one or more hospital that is part of the nonprofit health system.*

(e) *“Needy patient” shall have the same meaning as the term “financially qualified patient” is defined in Section 127400 of the Health and Safety Code, provided that, if a nonprofit hospital chooses to grant eligibility for its discount payment policy or charity care policies to patients with incomes over 350 percent of the federal poverty level, as permitted by Section 127405(a)(1)(A) of the Health and Safety Code, patients eligible under such policies shall also be deemed “needy patients.”*

(f) *“Net patient revenue” shall be calculated in accordance with generally accepted accounting principles for hospitals, and shall be consistent with information provided by a hospital in a compliant Hospital Annual Disclosure Report filed with the “office” pursuant to Section 128735 of the Health and Safety Code.*

(g) *“Nonprofit health system” means all nonprofit hospitals in this State that share the same fiscal year and that satisfy both of the following requirements:*

- (1) The nonprofit hospitals are owned, operated, or substantially controlled by the same person or persons or other legal entity or entities, including but not limited to by a shared corporate parent.*
- (2) The nonprofit hospitals are jointly, or jointly and severally, liable, through a master indenture or other agreement or agreements, for one or more debt obligations, including but not limited to loans, leases, commercial bonds, municipal bonds, or other debt instruments owed to a third party outside the nonprofit health system, if the debt obligations individually or collectively are material to any financial statement of at least one of the nonprofit hospitals under generally accepted accounting principles for hospitals.*

A nonprofit health system shall not include fewer than three nonprofit hospitals.

(h) *“Nonprofit hospital” means a hospital licensed under subdivision (a) of Section 1250 of the Health and Safety Code, which is organized as, owned and operated by, or substantially controlled by, a nonprofit corporation, as defined in this part or Part 4, or a nonprofit foreign corporation, as defined in Section 5033. Nonprofit hospital does not include children’s hospitals, as defined in Section 16996 of the Welfare and Institutions Code; public hospitals, as defined in paragraph (25) of subdivision (a) of Section 14105.98 of the Welfare and Institutions Code; or hospitals that are Medicare critical access hospitals pursuant to Section 1395i-4 of Title 42 of the United States Code.*

(i) *“Nonprofit supporting entities” means nonprofit entities created by a nonprofit hospital or its parent entity to further the charitable purposes of the nonprofit hospital and that are owned or controlled by the nonprofit hospital or its parent entity.*

(j) *“Operating margin” is an accounting term, which shall be calculated in accordance with generally accepted accounting principles for hospitals, and shall be based on a hospital’s operating earnings before depreciation and amortization.*

(k) *“Office” means the Office of Statewide Health Planning and Development.*

(l) *“Primary payer” means the person or other legal entity (other than the patient) that is or was legally required or responsible to make payment with respect to an item or service provided by a hospital to a patient (or any portion thereof) before any other person or other legal entity (other than the patient).*

(m) *“Safety-net nonprofit health system” means a nonprofit health system that in its fiscal year concluding in 2014, or in any fiscal year thereafter, satisfied each of the following conditions:*

- (1) The nonprofit hospitals that are part of the nonprofit health system at the time of the discharge together provided 10 percent or more of the State’s total number of inpatient discharges from general acute care licensed beds (as defined in regulations adopted pursuant to Section 1250.1 of Article 1 of the Health and Safety Code) where the primary payer is Medi-Cal.*
- (2) The nonprofit hospitals that are part of the nonprofit health system provided a combined total of 100 million dollars or more in charity care. For purposes of this paragraph, the amount of charity care provided by the nonprofit hospitals that are part of a nonprofit health system means the cost to the hospital of providing charity care, as defined by the hospital’s written charity care policy adopted pursuant to Section 127405 of the Health and Safety Code, consistent with data reported in compliance with the Health Data and Advisory Council Consolidation Act (commencing with Section 128675 of the Health and Safety Code) and any regulations, rules, or guidance issued under that chapter, for fiscal years concluding in 2014, 2015 and 2016; and the amount reported to the Attorney General in accordance with Section 5942 for fiscal years concluding in 2017 and thereafter.*
- (3) The nonprofit health system had a Medi-Cal utilization rate of 25 percent or greater. For purposes of this paragraph, “Medi-Cal utilization rate” means the ratio of “Medi-Cal discharges” divided by “all discharges,” where “all discharges” means the number of total inpatient discharges from general acute care licensed beds from all hospitals that are part of the nonprofit health system at the time of the discharge, and “Medi-Cal discharges” means the number of all discharges where Medi-Cal is the primary payer.*

The data employed to determine whether a health system satisfies the conditions in paragraphs (1), (2), and (3) shall be consistent with data reported in compliance with the Health Data and Advisory Council Consolidation Act (commencing with Section 128675) and any regulations, rules, or guidance issued under that chapter, except as otherwise indicated in paragraph (2).

(n) *“Unreimbursed costs” means the costs a nonprofit hospital incurs for providing individuals inpatient and outpatient services or items for which the nonprofit hospital does not receive reimbursement from any source, and for which the nonprofit hospital has no expectation at the time the services or items are provided that any third-party payer will pay in part or in whole. The term does not include payer discounts or contractual adjustments in reimbursements to third-party payers or costs for which the nonprofit hospital receives any partial payment for the related service, including but not limited to the following: third-party insurance payments; Medicare payments; Medi-Cal payments; payments from Tricare of the Civilian Health and Medical Program of the Uniformed Services; state reimbursements for education; payments from pharmaceutical companies to pursue research; grant funds for research; and disproportionate share payments. For purposes of this definition, the term “costs” shall be calculated by applying the cost to charge ratios, according to the nonprofit hospital’s most recently filed Medicare cost report, to billed charges. For purposes of this definition, charitable contributions and grants to a nonprofit hospital, including transfers from endowment or other funds controlled by the nonprofit hospital or its nonprofit supporting entities, shall not be subtracted from the costs of providing services for purposes of determining the unreimbursed costs of charity care.*

5941. Duty of Nonprofit Hospitals to Provide Appropriate Level of Charity Care.

(a) *In order to qualify as a nonprofit corporation as defined in this part or Part 4, to obtain and maintain tax-exempt status as provided by Section 23701 of the Revenue and Taxation Code, and to satisfy the requirements of this chapter, a nonprofit hospital shall provide an appropriate level of charity care as provided in this section.*

(b) *For fiscal years beginning on or after January 1, 2017, a nonprofit hospital shall annually satisfy the requirements of this chapter to provide an appropriate level of charity care by complying with the standard set forth in subdivision (c).*

(c) *A nonprofit hospital annually shall provide charity care in a combined amount equal to at least five percent of the nonprofit hospital’s net patient revenue. For purposes of satisfying this subdivision, a nonprofit hospital may not change its existing fiscal year unless the nonprofit hospital changes its ownership or corporate structure as a result of a sale or merger.*

(d) *A determination of the amount of charity care provided by a nonprofit hospital shall be based on the most recently completed and audited prior fiscal year of the nonprofit hospital.*

(e) *In any fiscal year that a nonprofit hospital, through unintended miscalculation, fails to satisfy subdivision (c), the nonprofit hospital shall not lose its tax-exempt status or nonprofit corporation status without the opportunity to cure the miscalculation in the fiscal year following the fiscal year the failure is discovered by both meeting the standard provided in subdivision (c) and providing an additional amount of charity care that is equal to the shortfall from the previous fiscal year. A nonprofit hospital shall notify the Attorney General that it intends to cure a miscalculation. Such notification shall be included in a nonprofit hospital’s annual report submitted pursuant to subdivision (b) of Section 5942. A nonprofit hospital may apply this provision only once every five years.*

(f) If a nonprofit hospital reasonably determines that providing charity care in accordance with this section in a given fiscal year would result in the nonprofit hospital having an annual operating margin of less than one percent, the nonprofit hospital may petition the Attorney General to be excused in whole or in part from complying with subdivision (c) in that fiscal year. The Attorney General may excuse compliance if he concurs with the nonprofit hospital's conclusion that compliance with subdivision (c) would result in the nonprofit hospital having an operating margin of less than one percent in the fiscal year at issue.

(g) The requirements of this section shall not apply to a nonprofit hospital that is part of an integrated nonprofit health system or a nonprofit hospital that is part of a safety-net nonprofit health system.

5942. Reporting and Data Collection; Confidentiality of Patient Information.

(a) The Attorney General shall establish a uniform reporting and collection system for data regarding nonprofit hospitals' provision of charity care.

(b) For fiscal years beginning on or after January 1, 2017, nonprofit hospitals shall file annual reports with the Attorney General stating the charity care provided by the nonprofit hospitals. Nonprofit hospitals shall make these reports publicly available, including by posting on an Internet Website, except that any confidential patient-specific data included in the reports shall be removed before public disclosure.

(c) In lieu of the report required under subdivision (b), a nonprofit hospital may elect to include the information regarding its charity care, which it is required to report pursuant to subdivision (b), in the nonprofit hospital's annual community benefits plan filed with the office pursuant to Section 127350 of the Health and Safety Code, provided that the nonprofit hospital submit a copy of its annual community benefits plan to the Attorney General and make the plan publicly available, including by posting on an Internet Website, except that any confidential patient-specific data included in the plan shall be removed before public disclosure.

(d) The Attorney General shall adopt necessary rules consistent with this section:

- (1) to govern the reporting and collection of data; and*
- (2) to ensure the confidentiality of any patient-specific data.*

(e) The Attorney General shall enter into an interagency agreement with the office relating to the reporting and collection of data under subdivisions (a), (b) and (c), and the adoption of rules under subdivision (d).

(f) Nothing in this chapter shall preclude the Attorney General from requiring nonprofit hospitals to provide additional information regarding their charitable activities, or preclude the Attorney General from entering into interagency agreements with other agencies and departments regarding the reporting, collection and analysis of data relating to charity care.

5943. Penalties.

(a) The Attorney General may assess a civil penalty against a nonprofit hospital that fails to make a report of charity care that complies with the requirements of this chapter or regulations promulgated pursuant to this chapter. The penalty may not exceed \$1,000 for each day a compliant report is delinquent after the date on which the report is due, up to a maximum of \$300,000. No penalty may be assessed against a hospital under this section until 10 business days have elapsed after written notification to the hospital of its failure to file a compliant report, and no penalty may be assessed if the nonprofit hospital submits the required report within those 10 business days.

(b) A nonprofit hospital may petition the Attorney General for reconsideration of the assessment of a civil penalty under this section. The Attorney General shall promulgate regulations governing the review, acceptance, and denial of such petitions.

5944. Enforcement; Rights and Remedies.

(a) A nonprofit hospital that violates the provisions of Section 5941 has committed a serious offense within the meaning of Sections 6511(a)(1) and 8511(a)(1) that is also a ground for forfeiture of corporate existence within the meaning of Sections 6511(a)(3) and 8511(a)(3).

(b) In addition to any other enforcement actions available under the law, and notwithstanding any other provision of law, the Attorney General may bring or intervene in a civil action for a violation of this chapter for civil penalties as provided in Section 5943 and for appropriate equitable relief including, but not limited to, revocation of a hospital's status as a nonprofit corporation under Section 23701 of the Revenue and Taxation Code and revocation of nonprofit corporate status under this part of Part 4. In the event that a nonprofit corporation seeks to change its status to a for-profit corporation as a result of such revocation, the corporation shall be required to distribute all of its charitable assets in accordance with their charitable purposes with the approval of the Attorney General and: (1) the provisions of Sections 5813.5 and Article 2 of Chapter 9 of Part 2 of Division 2 of Title 1 shall apply ; and (2) except with respect to an agreement or transaction subject to Section 5914 or 5920, Section 5913 shall apply.

(c) The rights and remedies provided for in this chapter shall not limit, affect, change, or repeal any statutory or common-law rights or remedies.

5945. Supervision by Attorney General.

(a) Notwithstanding any other provision of law or any provision in a nonprofit corporation's charter or bylaws, the Attorney General may, to promote the purposes of this chapter, appoint any person to serve as the Attorney General's representative on the board of directors of any nonprofit hospital that fails to comply with Section 5941, and has not been excused from compliance in accordance with subdivision (f) of Section 5941 and has not notified the Attorney General of its intent to cure a miscalculation in accordance with subdivision (e) of Section 5941; provided that this section shall not apply to nonprofit hospitals organized as, or owned and

operated by, a nonprofit religious corporation, as defined in Section 5061, or a nonprofit foreign corporation, as defined in Section 5053.

(b) A person appointed to the board of directors of any nonprofit hospital under subdivision (a) shall serve for a term of years set by the Attorney General and shall have all the rights, powers, and duties as other members of the board of directors. At no time shall more than one person serve as a representative of the Attorney General on any nonprofit hospital's board.

(c) The Attorney General shall remove a person appointed to the hospital's board of directors under subdivision (a) if the Attorney General determines that the appointment is no longer necessary or reasonable to achieve the purposes of this chapter. A nonprofit hospital may petition the Attorney General to remove a person appointed to the hospital's board of directors under subdivision (a). The Attorney General shall grant such a petition if the appointment is no longer necessary or reasonable to achieve the purposes of this chapter. The Attorney General may promulgate regulations governing the processing and approval and denial of such petitions.

5946. Charity Care Designation.

(a) Any patient, state taxpayer or nonprofit hospital may file a request that the Attorney General review costs a nonprofit hospital has designated as charity care in order to satisfy the requirements of Section 5941. The request for review shall state the reasons the requestor believes that a nonprofit hospital has identified costs as charity care that do not satisfy the definition of charity care provided in subdivision (b) of Section 5940. The Attorney General shall make any requests for review filed pursuant to this subdivision publicly available.

(b) If a request for review raises a significant question regarding whether some or all of the costs a nonprofit hospital has identified as charity care are properly designated as charity care, the Attorney General shall grant the request for review. In assessing whether a request for review raises a significant question, the Attorney General may consider the amount of costs at issue and whether the question is one that may affect other nonprofit hospitals' calculations of charity care. The Attorney General shall notify the public, the requestor, and the nonprofit hospital whose costs are the subject of the request for review of its decision to grant or deny a request for review.

(c) Upon granting a request for review, the Attorney General shall hold a public comment period on the request for review. The public comment period shall last 45 days, beginning on the date of the public notice provided under subdivision (b), unless the Attorney General notifies the public that the public comment period is extended for any reason.

(d) Within 45 days of completion of the public comment period, the Attorney General shall issue a determination addressing whether the costs that are the subject of the request for review are properly designated as charity care pursuant to this chapter.

(e) A patient, state taxpayer or nonprofit hospital may ask the Attorney General for an opinion regarding whether a particular cost properly is designated as charity care in accordance with

subdivision (b) of Section 5940. The Attorney General shall publish any opinions issued pursuant to this subdivision.

(f) Any public notice required by this section shall be posted on the Attorney General's Internet Website and distributed to the major statewide media and to any member of the public who requests placement on a mailing list or electronic mail to receive the notice.

5947. The Attorney General may assess reasonable fees on nonprofit hospitals in amounts designed to cover the costs incurred in processing petitions pursuant to subdivision (f) of Section 5941, administering the reporting and collection of data pursuant to Section 5942, processing petitions pursuant to subdivision (b) of Section 5943, and appointment of representatives pursuant to Section 5945. The Attorney General may assess reasonable fees on filers of requests for review pursuant to Section 5956 in amounts designed to cover the costs incurred in processing such requests.

5948. The Attorney General may adopt regulations implementing this chapter.

5949. This chapter shall remain in effect only until December 31, 2021, and as of that date is repealed, unless a later enacted statute, which is enacted before December 31, 2021, deletes or extends that date.

SEC. 4.

Section 5047.5 of the Corporations Code is amended to read:

5047.5

(a) The Legislature finds and declares that the services of directors and officers of nonprofit corporations who serve without compensation are critical to the efficient conduct and management of the public service and charitable affairs of the people of California. The willingness of volunteers to offer their services has been deterred by a perception that their personal assets are at risk for these activities. The unavailability and unaffordability of appropriate liability insurance makes it difficult for these corporations to protect the personal assets of their volunteer decisionmakers with adequate insurance. It is the public policy of this state to provide incentive and protection to the individuals who perform these important functions.

(b) Except as provided in this section, no cause of action for monetary damages shall arise against any person serving without compensation as a director or officer of a nonprofit corporation subject to Part 2 (commencing with Section 5110), Part 3 (commencing with Section 7110), or Part 4 (commencing with Section 9110) of this division on account of any negligent act or omission occurring (1) within the scope of that person's duties as a director acting as a board member, or within the scope of that person's duties as an officer acting in an official capacity; (2) in good faith; (3) in a manner that the person believes to be in the best interest of the corporation; and (4) is in the exercise of his or her policymaking judgment.

- (c) This section shall not limit the liability of a director or officer for any of the following:
- (1) Self-dealing transactions, as described in Sections 5233 and 9243.
 - (2) Conflicts of interest, as described in Section 7233.
 - (3) Actions described in Sections 5237, 5944, 7236, and 9245.
 - (4) In the case of a charitable trust, an action or proceeding against a trustee brought by a beneficiary of that trust.
 - (5) Any action or proceeding brought by the Attorney General.
 - (6) Intentional, wanton, or reckless acts, gross negligence, or an action based on fraud, oppression, or malice.
 - (7) Any action brought under Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code.
- (d) This section only applies to nonprofit corporations organized to provide religious, charitable, literary, educational, scientific, social, or other forms of public service that are exempt from federal income taxation under Section 501(c)(3) or 501(c)(6) of the Internal Revenue Code.
- (e) This section applies only if the nonprofit corporation maintains a liability insurance policy with an amount of coverage of at least the following amounts:
- (1) If the corporation's annual budget is less than fifty thousand dollars (\$50,000), the minimum required amount is five hundred thousand dollars (\$500,000).
 - (2) If the corporation's annual budget equals or exceeds fifty thousand dollars (\$50,000), the minimum required amount is one million dollars (\$1,000,000).
- This section applies only if the claim against the director or officer can also be made directly against the corporation and a liability insurance policy is applicable to the claim. If that policy is found to cover the damages caused by the director or officer, no cause of action as provided in this section shall be maintained against the director or officer.
- (f) For the purposes of this section, the payment of actual expenses incurred in attending meetings or otherwise in the execution of the duties of a director or officer shall not constitute compensation.
- (g) Nothing in this section shall be construed to limit the liability of a nonprofit corporation for any negligent act or omission of a director, officer, employee, agent, or servant occurring within the scope of his or her duties.
- (h) This section does not apply to any corporation that unlawfully restricts membership, services, or benefits conferred on the basis of political affiliation, age, or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code.
- (i) This section does not apply to any volunteer director or officer who receives compensation from the corporation in any other capacity, including, but not limited to, as an employee.

SEC. 5.

Section 9230 of the Corporations Code is amended to read:

9230.(a) Except as the Attorney General is empowered to act in the enforcement of the criminal laws of this state, and except as the Attorney General is expressly empowered by subdivisions (b), (c), and (d), *and Chapter 9.5 (commencing with Section 5490) of Part 2*, the Attorney General shall have no powers with respect to any corporation incorporated or classified as a religious corporation under or pursuant to this code.

(b) The Attorney General shall have authority to institute an action or proceeding under Section 803 of the Code of Civil Procedure, to obtain judicial determination that a corporation is not properly qualified or classified as a religious corporation under the provisions of this part.

(c) The Attorney General shall have the authority (1) expressly granted with respect to any subject or matter covered by Sections 9660 to 9690, inclusive; (2) to initiate criminal procedures to prosecute violations of the criminal laws, and upon conviction seek restitution as punishment; and (3) to represent as legal counsel any other agency or department of the State of California expressly empowered to act with respect to the status of religious corporations, or expressly empowered to regulate activities in which religious corporations, as well as other entities, may engage.

(d) Where property has been solicited and received from the general public, based on a representation that it would be used for a specific charitable purpose other than general support of the corporation's activities, and has been used in a manner contrary to that specific charitable purpose for which the property was solicited, the Attorney General may institute an action to enforce the specific charitable purpose for which the property was solicited; provided (1) that before bringing such action the Attorney General shall notify the corporation that an action will be brought unless the corporation takes immediate steps to correct the improper diversion of funds, and (2) that in the event it becomes impractical or impossible for the corporation to devote the property to the specified charitable purpose, or that the directors or members of the corporation in good faith expressly conclude and record in writing that the stated purpose for which the property was contributed is no longer in accord with the policies of the corporation, then the directors or members of the corporation may approve or ratify in good faith the use of such property for the general purposes of the corporation rather than for the specific purpose for which it was contributed.

As used in this section, "solicited from the general public" means solicitations directed to the general public, or to any individual or group of individuals who are not directly affiliated with the soliciting organization and includes, but is not limited to, instances where property has been solicited on an individual basis, such as door to door, direct mail, face to face, or similar solicitations, as well as solicitations on a more general level to the general public, or a portion thereof, such as through the media, including newspapers, television, radio, or similar solicitations.

(e) Nothing in this section shall be construed to affect any individual rights of action which were accorded under law in existence prior to the enactment of Chapter 1324 of the Statutes of 1980.

As used in this section, “individual rights of action” include only rights enforceable by private individuals and do not include any right of action of a public officer in an official capacity regardless of whether the officer brings the action on behalf of a private individual.

(f) Nothing in this section shall be construed to require express statutory authorization by the California Legislature of any otherwise lawful and duly authorized action by any agency of local government.

SEC. 6.

Section 23701 of the Revenue and Taxation Code is amended and renumbered to read:

23701. Organizations which are organized and operated for nonprofit purposes within the provisions of a specific section of this article, or are defined in Section 23701h (relating to certain title-holding companies) or Section 23701x (relating to certain title-holding companies), are exempt from taxes imposed under this part, except as provided in this article or in Article 2 (commencing with Section 23731) of this chapter, if:

(a) An application for exemption is submitted in the form prescribed by the Franchise Tax Board; and

(b) A filing fee of twenty-five dollars (\$25) is paid with each application for exemption filed with the Franchise Tax Board after December 31, 1969; and

(c) The Franchise Tax Board issues a determination exempting the organization from tax.

(d)(1) Notwithstanding subdivisions (a), (b), and (c), an organization organized and operated for nonprofit purposes in accordance with Section 23701a, 23701d, 23701e, 23701f, or 23701g shall be exempt from taxes imposed by this part, except as provided in this article or in Article 2 (commencing with Section 23731), upon its submission to the Franchise Tax Board of one of the following:

(A) A copy of the determination letter or ruling issued by the Internal Revenue Service recognizing the organization’s exemption from federal income tax under Section 501(a) of the Internal Revenue Code, as an organization described in Section 501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue Code.

(B) A copy of the group exemption letter issued by the Internal Revenue Service that states that both the central organization and all of its subordinates are tax-exempt under Section 501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue Code and substantiation that the organization is included in the federal group exemption letter as a subordinate organization.

(2)(A) Upon receipt of the documents required in subparagraph (A) or (B) of paragraph (1), the Franchise Tax Board shall issue an acknowledgment that the organization is exempt from taxes imposed by this part, except as provided in this article or in Article 2 (commencing with Section 23731). The acknowledgment may refer to the organization’s recognition by the Internal

Revenue Service of exemption from federal income tax as an organization described in Section 501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue Code and, if applicable, the organization's subordinate organization status under a federal group exemption letter. The effective date of an organization's exemption from state income tax pursuant to this subdivision shall be no later than the effective date of the organization's recognition of exemption from federal income tax as an organization described in Section 501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue Code, or its status as a subordinate organization under a federal group exemption letter, as applicable.

(B) Notwithstanding any other provision of this subdivision, an organization formed as a California corporation or qualified to do business in California that, as of the date of receipt by the Franchise Tax Board of the documents required under paragraph (1), is listed by the Secretary of the State or Franchise Tax Board as "suspended" or "forfeited" may not establish its exemption under paragraph (1) and shall not receive an acknowledgment referred to under subparagraph (A) from the Franchise Tax Board until that corporation is listed by the Secretary of State and the Franchise Tax Board as an "active" corporation.

(3) If, for federal income tax purposes, an organization's exemption from tax as an organization described in Section 501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue Code is suspended or revoked, the organization shall notify the Franchise Tax Board of the suspension or revocation, in the form and manner prescribed by the Franchise Tax Board. Upon notification, the board shall suspend or revoke, whichever is applicable, for state income tax purposes, the organization's exemption under paragraph (1).

(4) This subdivision shall not be construed to prevent the Franchise Tax Board from revoking the exemption of an organization that is not organized or operated in accordance with California law, this chapter, or Section 501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue Code.

(5) In order to qualify for and maintain tax-exempt status pursuant to this section, a nonprofit hospital, as defined in subdivision (h) of Section 5940 of the Corporations Code, shall comply with the requirements of Chapter 9.5 (commencing with Section 5940) of Part 2 of Division 2 of Title 1 of the Corporations Code.

~~(5)(6)~~ If the Franchise Tax Board suspends or revokes the exemption of an organization pursuant to paragraph (3), ~~or (4), or (5)~~, the exemption shall be reinstated only upon compliance with this section, regardless of whether the organization can establish exemption under paragraph (1).

(e) This section shall not prevent a determination from having retroactive effect and does not prevent the issuance of a determination with respect to a domestic organization which was in existence prior to January 1, 1970, and exempt under prior law without the submission of a formal application or payment of a filing fee. For the purpose of this section, the term "domestic" means created or organized under the laws of this state.

(f) The Franchise Tax Board may prescribe rules and regulations to implement the provisions of this article.

SEC. 7. Amendment.

Pursuant to subdivision (c) of Section 10 of Article II of the California Constitution, this act may be amended either by a subsequent measure submitted to a vote of the people at a statewide election; or by statute validly passed by the Legislature and signed by the Governor, but only to further the purposes of the act.

SEC. 8. Severability.

It is the intent of the People that the provisions of this act are severable and that if any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application.