

AB 60

Proposed by the Office of the Nevada Attorney General in partnership with the Secretary of State

PURPOSE OF LEGISLATION

Creates a distinction between non-profits formed under Nevada law that solicit charitable (tax deductible) contributions under the federal tax code, 501c (3) and those that solicit contributions that are not tax deductible because they do not have 501c (3) status. This legislation does not restrict a non-profit corporation from soliciting contributions, it just requires that the non-profit disclose whether the contribution is a federally qualified tax deductible contribution or is not tax-deductible.

BACKGROUND

Currently, under NRS Chapter 82, an entity can file formation documents establishing it as a Nevada non-profit corporation. Also, a non-profit created in a jurisdiction outside Nevada can qualify as a foreign non-profit corporation if it is going to engage in activity in this State. A nonprofit corporation is an entity whereby no part of the income or profit of which is distributable to its members, directors or officers, except as otherwise provided in chapter 82, for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose, pursuant and subject to the requirements of chapter 82.

When creating a Nevada non-profit or registering a foreign non-profit, there is no requirement that the entity provide a Federal Tax Id Number, information or prove it has federal non-profit status pursuant to the IRS 501(c) code. This filing as a Nevada non-profit does not establish it as a tax-exempt or tax deductible organization under the federal tax code. The IRS has its own filing requirements and qualifications that grant an entity a specific tax status. This filing also does not grant an entity tax exemption under state law. The entity must complete the documentation and meet the qualifications of the State Department of Taxation.

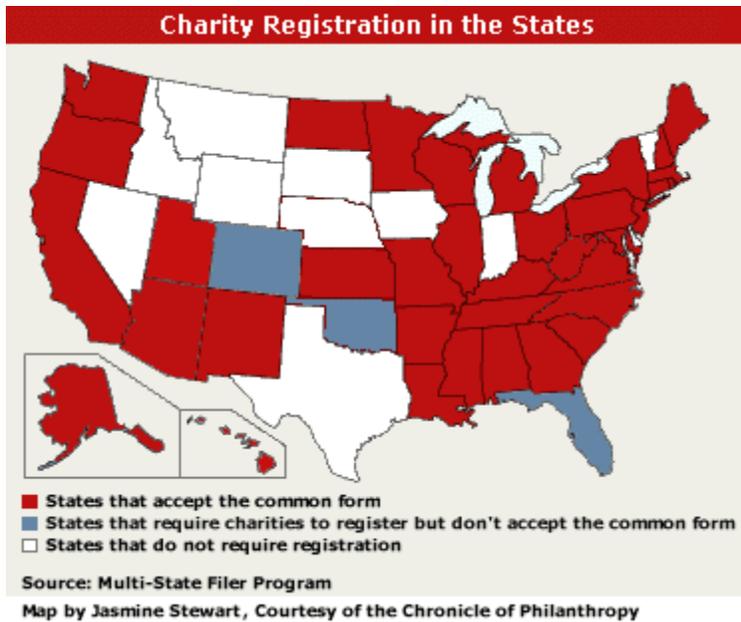
In filing the formation documents or foreign qualifications, the following is required:

- Name of Corporation
- A Registered Agent/Acceptance of Appointment as Registered Agent
- Names and Addresses of Board of Directors/Trustees
- Purpose
- Name, Address & Signature of Incorporator

Fees: \$50 Articles of Incorporation
\$25 Initial List of Officers
\$25 Annual List of Officers

As the map below indicates¹, 40 states and the District of Columbia have a registration requirement for charitable soliciting organizations. In most states, this registration is a separate registration from the formation filing and may require additional filing fees. Most charity registrations are not filed with the Secretary of State but with the Attorney General's office or another state executive licensing division.

¹ The date of this map is unknown. Attempts to confirm the accuracy of this map as of January 2013 are being made.



AB 60 does not create an additional filing requirement. AB 60 proposes to require additional information for entities soliciting charitable contributions/donations as part of the Articles of Incorporation and/or the Annual List of Officers.

PROPOSED CHANGES TO FILING REQUIREMENTS

The legislation proposes to add a question to the Articles of Incorporation asking if the non-profit entity intends to solicit charitable/tax deductible contributions pursuant to the federal tax code.

If the answer is no, the entity will proceed with the filing requirements as they are presently.

If the non-profit entity answers yes, the entity under this legislation would become designated as a non-profit soliciting tax-deductible contributions and would be required to file the following additional information as part of its Articles of Incorporation:

- provide its name exactly as the name is registered with the Internal Revenue Service;
- its federal tax identification number, its 501 (c) status
- the name of the entity as registered with the Nevada Secretary of State or jurisdiction of origin
- the name or names, if different from the legal entity name, under which it may or intends to solicit tax deductible contributions (e.g., a “dba” or fictitious firm name);
- The address and telephone number of the principal place of business of the nonprofit corporation and the address and telephone number of any offices in this State, or if the non-profit corporation does not maintain an office in this State, the name, address and telephone number of the person who has custody of its financial records
- any other information deemed by the SoS
- shall file annually, in addition to other already required filings, a financial report
 - a financial report must contain the financial information as determined by the Secretary of State of the non-profit corporation for the most recent

fiscal year. In the discretion of the Secretary of State, a copy of the Form 990, with all schedules except the schedules of donors, for the most recent fiscal year may serve as the financial report. If a non-profit corporation was first formed within the past year and does not have financial information or has not yet completed a Form 990 for its most recent fiscal year, the financial report information must use good faith estimates for its current fiscal year on a form prescribed by the Secretary of State.

Annual List of Officers Filing Change

Additionally as part of the annual list of officers filing, the entity will provide a new financial report and if its statement of purpose has changed, a revised statement of purpose.

PUBLIC INFORMATION

Currently the Nevada Business entity search provides a searchable database of all entities domiciled or qualified in the State of Nevada. The additional information provided on the Articles of Incorporation and the annual list filings will be made available to the public on the Secretary of State's website so that the public can see if the non-profit entity has filed documents indicating its IRS tax status as 501 (c) 3 or if it is just a Nevada or foreign-qualified nonprofit corporation.

SOLICITATION DISCLOSURE REQUIREMENTS

AB 60 establishes basic disclosure requirements when an entity solicits funds from individuals, businesses and organizations. This bill requires that any entity or person soliciting on behalf of a charitable or non-profit entity provide the full legal name of the entity as registered with the Secretary of State; the state of jurisdiction in which the entity was formed; its purpose and whether the entity is tax exempt pursuant to the provisions of section 501 (c) 3 of the Internal Revenue Code. This disclosure requirement is also required in any solicitation done in writing, including electronic formats.

ENFORCEMENT

This bill contains some additional enforcement powers and associated penalties for nonprofit entities that violate the provision of this chapter.

Current law provides for late fees for any filing that is delinquent. This bill proposes to add a civil penalty not to exceed \$1000 if a non-profit fails to file the required delinquent report or pay delinquent fees after being notified and failing to comply with filing requirements. The Secretary of State may order a cease and desist to the non-profit entity prohibiting the entity from soliciting contributions for failure to comply with filing requirements.

Under this proposed legislation, the Secretary of State may investigate transactions and solicitations of the non-profits entities to ascertain whether or not the purposes of the non-profit corporation or the solicitation practices of the entity are being carried out in accordance with the terms and provisions of the articles of incorporation, whether the entity or its officers has engaged in a violation of the filing requirements. Such investigation may result in a cease and desist or revocation of an entity's right to transact business in state for failure to comply with requirements of the chapter. The Secretary of State may forward a request to the Attorney General to institute legal proceeding on its behalf.

WHY THIS LEGISLATION IS NECESSARY

The primary goal of this legislation is to create more transparency about the non-profit entity in the filing requirements and to provide information to the public as to the charitable tax status of non-profits entities that are soliciting contributions in this state. Many individuals and businesses give to non-profits entities under the assumption that because it is formed as a Nevada non-profit corporation that the contribution is tax-deductible under the federal tax code.

Many do not know that there are other types of 501 c entities which can solicit contributions but they are not considered charitable or tax deductible. Nor do they understand the distinction between a non-profit corporation created pursuant to Nevada law and a federally designated non-profit. To the consumer, any entity calling itself a non-profit is in fact a charitable organization and therefore any contribution or donation made to that entity can be tax-deductible. This, however, is not accurate.

This legislation is not meant to harm the nonprofit sector or curb the practice of soliciting contributions or donations; its purpose is to require the non-profit entity to disclose to its prospective donors or contributors whether or not such contribution/donation may qualify as a charitable or tax-deductible contribution/donation under the Internal Revenue Code.

Finally, while the majority of non-profits, whether they have charitable status or not, operate for legitimate purposes in this state; there are instances where people have created non-profit corporations for fraudulent purposes. They claim their Nevada nonprofit status and prey on people's generosity to solicit and collect funds that are never intended to go to that effort or the mission under which they solicit.

AMENDMENTS TO BE PROPOSED

The intent of the bill was not to change the current statutory fee structure. However, Section 5, page 5, lines 8-14 imposes a duplicate delinquency fee. An amendment has been prepared to remove that fee and refer to the current fee in NRS 82.193.

Proposed language in section 12, page 9, lines 34-36 needs to be amended to clearly inform donors whether or not the contribution may be tax deductible not the tax exempt state of the entity.

QUESTIONS

For questions related to this legislation please email sosexec@sos.nv.gov; in the subject line please reference AB 60.