ASSEMBLY BILL No. 556

Introduced by Assembly Member Irwin

February 23, 2015

An act to amend Section 17510.85 of the Business and Professions Code, to amend Section 2225 of, and to add Section 2226 to, the Civil Code, to add Sections 6816 and 8818 to the Corporations Code, and to amend Section 12596 of the Government Code, relating to trusts.

LEGISLATIVE COUNSEL'S DIGEST

AB 556, as introduced, Irwin. Trusts: regulation and enforcement.

Existing law requires an individual or entity who for compensation solicits funds or property for charitable purposes to disclose that the solicitation is being conducted by a commercial fundraiser for a charitable purpose and the registered name of the commercial fundraiser.

This bill would also require an individual or entity who solicits funds or property for charitable purposes with the participation of a fundraising counsel for charitable purposes to make specified disclosures regarding the fundraising counsel. The bill would require the disclosures, if printed or if presented electronically, to be in at least 12-point type.

Existing law, the Supervision of Trustees and Fundraisers for Charitable Purposes Act, generally regulates charitable corporations, trustees, and other legal entities holding property for charitable purposes, commercial fundraisers for charitable purposes, and fundraising counsel for charitable purposes, among others, over which the state or the Attorney General has enforcement or supervisory powers. Existing law requires the Attorney General to establish and maintain a register of charitable corporations, unincorporated associations, and trustees subject to these provisions and of the particular trust or other relationship under

which they hold property for charitable purposes. Existing law authorizes the Attorney General to bring any action against trustees or against any charitable corporation or director or officer thereof, to enforce a charitable trust, to impress property with a trust for charitable purposes, or to recover property or the proceeds thereof at any time within 10 years after the cause of action accrued.

This bill would authorize the Attorney General to bring an action for a violation of these provisions at any time within 10 years after the cause of action accrued. The bill would also authorize the Attorney General to bring an action for civil liability against a person who aids or abets a violation of these provisions at any time within 10 years after the cause of action accrued.

Existing law provides that one who wrongfully detains a thing is an involuntary trustee thereof for the benefit of the owner, and that one who gains a thing by fraud, or other wrongful act is an involuntary trustee of the thing gained for the benefit of the owner.

This bill would authorize the Attorney General to bring an action for civil liability against a person who aids or abets a violation of these provisions at any time within 10 years after the cause of action accrued.

Existing law also imposes an involuntary trust for a period of 5 years upon the proceeds and profits from the sale or transfer of any thing or right of a felon, the value of which is enhanced by the notoriety gained from the commission of the felony, and specifies procedures whereby the beneficiaries of the trust, as defined, are authorized to enforce their rights under the trust. Existing law authorizes the Attorney General to bring an action to require proceeds or profits by a convicted felon to be held in an express trust within one year after the receipt of proceeds or profits, or one year after the date of the conviction, whichever is later.

This bill would extend the period of the involuntary trust imposed upon the proceeds and profits of a felon to 10 years. The bill would authorize the Attorney General to bring an action to require the proceeds or profits of a felon to be held in an express trust within 10 years after the receipt of the proceeds or profits, or 10 years after the date of conviction, whichever is later. The bill would also authorize the Attorney General to bring an action for a violation of these provisions at any time within 10 years after the cause of action accrued.

Existing law, the Nonprofit Corporation Law, set forth standards of conduct for directors and officers of nonprofit public benefit corporations and provides that it is a crime for any director or officer of any corporation among other things, to knowingly engage in specified

acts relating to fraud, to make materially false reports, to receive or acquire possession of the property of the corporation, or to falsify the books or accounts of the corporation.

This bill would authorize the Attorney General to bring an action for a violation of these provisions at any time within 10 years after the cause of action accrued. The bill would also authorize the Attorney General to bring an action for civil liability against a person who aids or abets a violation of the standards of conduct for directors and officers of nonprofit public benefit corporations at any time within 10 years after the cause of action accrued.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 17510.85 of the Business and Professions Code is amended to read:

17510.85. ~~Any~~ *(a) An* individual, corporation, or other legal entity who for compensation solicits funds or other property in this state for charitable purposes shall disclose prior to an oral solicitation or sales solicitation made by direct personal contact, radio, television, telephone, or over the Internet, or at the same time as a written solicitation or sales solicitation: ~~(a) that~~

(1) That the solicitation or sales solicitation is being conducted by a commercial fundraiser for charitable ~~purposes, and (b) the~~ *purposes.*

(2) The name of the commercial fundraiser for charitable purposes as registered with the Attorney General pursuant to Section 12599 of the Government Code.

(b) An individual, corporation, or other legal entity who solicits funds or other property in this state for charitable purposes with the participation of a fundraising counsel for charitable purposes, as defined in Section 12599.1 of the Government Code, shall disclose prior to an oral solicitation or sales solicitation made by direct personal contact, radio, television, telephone, or via the Internet, or at the same time as a written solicitation or sales solicitation:

(1) That the solicitation or sales solicitation is being conducted with the participation of a fundraising counsel for charitable purposes.

(2) The name of the fundraising counsel for charitable purposes as registered with the Attorney General pursuant to Section 12599.1 of the Government Code.

(c) The disclosures required pursuant to this section, if printed or if presented electronically, shall be in at least 12-point type.

SEC. 2. Section 2225 of the Civil Code is amended to read:

2225. (a) As used in this section:

(1) "Convicted felon" means any person convicted of a felony, or found not guilty by reason of insanity of a felony committed in California, either by a court or jury trial or by entry of a plea in court.

(2) "Felony" means a felony defined by any California or United States statute.

(3) (A) "Representative of the felon" means any person or entity receiving proceeds or profits by designation of that felon, on behalf of that felon, or in the stead of that felon, whether by the felon's designation or by operation of law.

(B) "Profiteer of the felony" means any person who sells or transfers for profit any memorabilia or other property or thing of the felon, the value of which is enhanced by the notoriety gained from the commission of the felony for which the felon was convicted. This subparagraph shall not apply to any media entity reporting on the felon's story or on the sale of the materials, memorabilia, or other property or thing of the felon. Nor shall it apply to the sale of the materials, as the term is defined in paragraph (6), ~~where~~ *if* the seller is exercising his or her first amendment rights. This subparagraph also shall not apply to the sale or transfer by a profiteer of any other expressive work protected by the First Amendment unless the sale or transfer is primarily for a commercial or speculative purpose.

(4) (A) "Beneficiary" means a person who, under applicable law, other than the provisions of this section, has or had a right to recover damages from the convicted felon for physical, mental, or emotional injury, or pecuniary loss proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

(B) If a beneficiary described in subparagraph (A) has died, "beneficiary" also includes a person or estate entitled to recover damages pursuant to Chapter 4 (commencing with Section 377.10) of Title 3 of Part 2 of the Code of Civil Procedure.

(C) If a person has died and the death was proximately caused by the convicted felon as a result of the crime for which the felon was convicted, "beneficiary" also includes a person described in Section 377.60 of the Code of Civil Procedure and any beneficiary of a will of the decedent who had a right under that will to receive more than 25 percent of the value of the estate of the decedent.

(5) "Beneficiary's interest" means that portion of the proceeds or profits necessary to pay the following:

(A) In the case of a beneficiary described in subparagraph (A) or (B) of paragraph (4), those damages that, under applicable law, other than the provisions of this section, the beneficiary has or had a right to recover from the convicted felon for injuries proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

(B) In the case of a beneficiary described in subparagraph (C) of paragraph (4), those damages that, under all the circumstances of the case, may be just.

(C) A beneficiary's interest shall be reduced by the following amount:

(i) Money paid to the beneficiary from the Restitution Fund because of the crime for which the felon was convicted.

(ii) Money paid to the beneficiary by the convicted felon because of a requirement of restitution imposed by a court in connection with the crime for which the felon was convicted.

(iii) Money paid to the beneficiary because of a judgment against the convicted felon based upon the crime for which the felon was convicted.

(D) In the case of an unsatisfied existing judgment or order of restitution against the convicted felon and in favor of a beneficiary, any money paid to the beneficiary pursuant to this section shall be applied to reduce the amount of the unsatisfied judgment or order.

(6) "Materials" means books, magazine or newspaper articles, movies, films, videotapes, sound recordings, interviews or appearances on television and radio stations, and live presentations of any kind.

(7) "Story" means a depiction, portrayal, or reenactment of a felony and shall not be taken to mean a passing mention of the felony, as in a footnote or bibliography.

(8) "Sale" includes lease, license, or any other transfer or alienation taking place in California or elsewhere.

(9) "Proceeds" means all fees, royalties, real property, or other consideration of any and every kind or nature received by or owing to a felon or his or her representatives for the preparation for the purpose of sale of materials, for the sale of the rights to materials, or the sale or distribution by the convicted felon of materials whether earned, accrued, or paid before or after the conviction. It includes any interest, earnings, or accretions upon proceeds, and any property received in exchange for proceeds.

(10) "Profits" means all income from anything sold or transferred by the felon, a representative of the felon, or a profiteer of the felony, including any right, the value of which thing or right is enhanced by the notoriety gained from the commission of a felony for which a convicted felon was convicted. This income may have been accrued, earned, or paid before or after the conviction. However, voluntary donations or contributions to a defendant to assist in the defense of criminal charges shall not be deemed to be "profits," provided the donation or contribution to that defense is not given in exchange for some material of value.

(b) (1) All proceeds from the preparation for the purpose of sale, the sale of the rights to, or the sale of materials that include or are based on the story of a felony for which a convicted felon was convicted, shall be subject to an involuntary trust for the benefit of the beneficiaries set forth in this section. That trust shall continue until ~~five~~ *10* years after the time of payment of the proceeds to the felon or ~~five~~ *10* years after the date of conviction, whichever is later. If an action is filed by a beneficiary to recover his or her interest in a trust within those time limitations, the trust character of the property shall continue until the conclusion of the action. At the end of the ~~five-year~~ *10-year* trust period, any proceeds that remain in trust that have not been claimed by a beneficiary shall be transferred to the Controller, to be allocated to the Restitution ~~Fund for the payment of claims pursuant to Section 13969 of the Government Code.~~ *Fund.*

(2) All profits shall be subject to an involuntary trust for the benefit of the beneficiaries set forth in this section. That trust shall continue until ~~five~~ *10* years after the time of payment of the profits to the felon or ~~five~~ *10* years after the date of conviction, whichever is later. If an action is filed by a beneficiary to recover his or her interest in a trust within those time limitations, the trust character of the property shall continue until the conclusion of the action.

At the end of the ~~five-year~~ *10-year* trust period, any profits that remain in trust that have not been claimed by a beneficiary shall be transferred to the Controller, to be allocated to the Restitution ~~Fund for the payment of claims pursuant to Section 13969 of the Government Code.~~ *Fund.*

(3) Notwithstanding paragraph (2), in the case of a sale or transfer by a profiteer of the felony, the court in an action under subdivision (c) shall, upon an adequate showing by the profiteer of the felony, exclude from the involuntary trust that portion of the profits that represents the inherent value of the memorabilia, property, or thing sold or transferred and exclusive of the amount of the enhancement to the value due to the notoriety of the convicted felon.

(c) (1) Any beneficiary may bring an action against a convicted felon, representative of the felon, or a profiteer of a felony to recover his or her interest in the trust established by this section.

(2) That action may be brought in the superior court of the county in which the beneficiary resides, or of the county in which the convicted felon resides, or of the county in which proceeds or profits are located.

(3) If the court determines that a beneficiary is entitled to proceeds or profits pursuant to this section, the court shall order the payment from proceeds or profits that have been received, and, if that is insufficient, from proceeds or profits that may be received in the future.

(d) If there are two or more beneficiaries and if the available proceeds or profits are insufficient to pay all beneficiaries, the proceeds or profits shall be equitably apportioned among the beneficiaries taking into account the impact of the crime upon them.

Prior to any distribution of any proceeds to a beneficiary, the court shall determine whether the convicted felon has failed to pay any portion of a restitution fine or penalty fine imposed by a court, or any restitution imposed as a condition of probation. The court shall also determine whether the felon is obligated to reimburse a governmental entity for the costs of his or her defense and whether a portion of the proceeds is needed to cover his or her reasonable attorney's fees incurred in the criminal proceeding related to the felony, or any appeal or other related proceeding, or in the defense of the action brought under this section. The court shall order

payment of these obligations prior to any payment to a beneficiary, except that 60 percent of the proceeds or profits shall be reserved for payment to the beneficiaries.

(e) (1) The Attorney General may bring an action to require proceeds or profits received by a convicted felon to be held in an express trust in a bank authorized to act as a trustee.

(2) An action may be brought under this subdivision within ~~one year~~ *10 years* after the receipt of proceeds or profits by a convicted felon or ~~one year~~ *10 years* after the date of conviction, whichever is later.

That action may be brought in the superior court of any county in which the Attorney General has an office.

(3) If the Attorney General proves that the proceeds or profits are proceeds or profits from the sale of a story or thing of value that are subject to an involuntary trust pursuant to this section, and that it is more probable than not that there are beneficiaries within the meaning of this section, the court shall order that all proceeds or profits be deposited in a bank and held by the bank as trustee of the trust until an order of disposition is made by a court pursuant to subdivision (d), or until the expiration of the period specified in subdivision (b).

(4) If the Attorney General prevails in an action under this subdivision, the court shall order the payment from the proceeds or profits to the Attorney General of reasonable costs and attorney's fees.

(f) (1) In any action brought pursuant to this section, upon motion of a party the court shall grant a preliminary injunction to prevent any waste of proceeds or profits if it appears that the proceeds or profits are subject to the provisions of this section, and that they may be subject to waste.

(2) Upon motion of the Attorney General or any potential beneficiary, the court shall grant a preliminary injunction against a person against whom an indictment or information for a felony has been filed in superior court to prevent any waste of proceeds or profits if there is probable cause to believe that the proceeds or profits would be subject to an involuntary trust pursuant to this section upon conviction of this person, and that they may be subject to waste.

(g) Any violation of an order of a court made pursuant to this section shall be punishable as contempt.

(h) The remedies provided by this section are in addition to other remedies provided by law.

No period of limitations, except those provided by this section, shall limit the right of recovery under this section.

SEC. 3. Section 2226 is added to the Civil Code, to read:

2226. An action brought by the Attorney General pursuant to this title may be brought at any time within 10 years after the cause of action accrued.

SEC. 4. Section 6816 is added to the Corporations Code, to read:

6816. An action brought by the Attorney General for a violation of this chapter may be brought at any time within 10 years after the cause of the action accrued.

SEC. 5. Section 8818 is added to the Corporations Code, to read:

8818. An action brought by the Attorney General for a violation of this chapter may be brought at any time within 10 years after the cause of the action accrued.

SEC. 6. Section 12596 of the Government Code is amended to read:

12596. ~~Any~~ *(a) An* action brought by the Attorney General against trustees or other persons holding property in trust for charitable purposes or against any charitable corporation or any director or officer thereof to enforce a charitable trust or to impress property with a trust for charitable purposes or to recover property or the proceeds thereof for and on behalf of any charitable trust or corporation, may be brought at any time within ~~ten (10)~~ *10* years after the cause of action ~~shall have~~ accrued.

(b) An action brought by the Attorney General for a violation of this article, pursuant to Title 8 (commencing with Section 2223) of Part 4 of Division 3 of the Civil Code, or pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code, may be brought at any time within 10 years after the cause of action accrued.

(c) Notwithstanding Section 12581, the Attorney General may bring an action for civil liability against a person who aids or abets a violation of this article, Section 2223 or 2224 of the Civil Code, or Article 3 (commencing with Section 5230) of Chapter 2

of Division 2 of Title 1 of the Corporations Code, at any time within 10 years after the cause of action accrued.

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