

AMENDED IN ASSEMBLY JUNE 11, 2019  
AMENDED IN ASSEMBLY MARCH 28, 2019  
CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1712**

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**Introduced by Assembly Member Wicks**

February 22, 2019

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An act to amend Section 12586 of the Government Code, relating to charitable organizations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1712, as amended, Wicks. Donor advised funds.

The Supervision of Trustees and Fundraisers for Charitable Purposes Act governs charitable corporations, unincorporated associations, trustees, commercial fundraisers, fundraising counsel, commercial coventurers, and other legal entities holding or soliciting property for charitable purposes over which the state or the Attorney General has enforcement and supervisory powers. Under the act, specified charitable corporations and trustees are required to file with the Attorney General periodic written reports, under oath, that set forth information as to the nature of the assets held for charitable purposes and the administration of these assets by the corporation or the trustee in accordance with rules and regulations of the Attorney General. Existing law exempts from this filing requirement corporate trustees subject to the jurisdiction of the Commissioner of Business Oversight.

~~This bill would express the intent of the Legislature to enact legislation that would relate to donor-advised funds for the purpose of improving transparency and accountability through annual reporting requirements and promoting best practices.~~

This bill would also require the Attorney General to adopt rules and regulations requiring a donor-advised fund, as defined, to include specified information in reports to the Attorney General for the purpose of helping the Attorney General determine whether the funds or accounts managed by the donor-advised fund are being administered properly.

This bill would make nonsubstantive changes and a conforming change.

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

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

1     ~~SECTION 1. The Legislature hereby finds and declares all of~~  
2     ~~the following:~~  
3     ~~(a) California taxpayers claim millions of dollars in tax~~  
4     ~~deductions each year for contributions made to donor advised~~  
5     ~~funds (DAF).~~  
6     ~~(b) Charitable contributions to organizations that sponsor DAFs~~  
7     ~~account for a rapidly growing share of charitable giving. Recent~~  
8     ~~reports have found all of the following:~~  
9     ~~(1) In 2016, six of the top ten recipients of charitable~~  
10    ~~contributions in the United States were DAF sponsors, including~~  
11    ~~the Fidelity Charitable Gift Fund, which received more charitable~~  
12    ~~contributions than any other organization.~~  
13    ~~(2) The national share of total individual charitable giving~~  
14    ~~contributed to DAFs increased from 4.4 percent in 2010 to 10.2~~  
15    ~~percent in 2017.~~  
16    ~~(3) DAF sponsoring organizations held more than \$110 billion~~  
17    ~~in charitable assets in 2017.~~  
18    ~~(c) A DAF is a charitable giving tool that has been used for~~  
19    ~~decades by community foundations and other charities.~~  
20    ~~Accelerating growth in the use of DAFs and the rapid expansion~~  
21    ~~of DAFs affiliated with for-profit investment management~~  
22    ~~businesses raises significant questions about whether these funds~~  
23    ~~are being used as originally intended.~~  
24    ~~(d) Various reports analyzing DAFs suggest that in some cases~~  
25    ~~each of the following are true:~~  
26    ~~(1) Contributions to DAFs have less transparency, oversight,~~  
27    ~~and accountability associated with them than other types of~~  
28    ~~charitable giving.~~

1 ~~(2) Contributions to DAFs frequently fail to produce public~~  
2 ~~benefits that are equivalent to the public benefits from contributions~~  
3 ~~made to nonprofits that engage directly in charitable services and~~  
4 ~~activities.~~

5 ~~(3) DAFs are often conventionally invested in industries and~~  
6 ~~economic sectors that may be at odds with the DAF's charitable~~  
7 ~~purpose.~~

8 ~~SEC. 2. It is the intent of the Legislature to enact legislation~~  
9 ~~that would relate to donor advised funds for the purpose of~~  
10 ~~improving transparency and accountability through annual~~  
11 ~~reporting requirements and promoting best practices.~~

12 ~~SEC. 3.~~

13 *SECTION 1.* Section 12586 of the Government Code is  
14 amended to read:

15 12586. (a) Except as otherwise provided and except corporate  
16 trustees which are subject to the jurisdiction of the Commissioner  
17 of Business Oversight under Division 1 (commencing with Section  
18 99) of the Financial Code or to the Comptroller of the Currency  
19 of the United States, every charitable corporation, unincorporated  
20 association, and trustee subject to this article shall, in addition to  
21 filing copies of the instruments previously required, file with the  
22 Attorney General periodic written reports, under oath, setting forth  
23 information as to the nature of the assets held for charitable  
24 purposes and the administration thereof by the corporation,  
25 unincorporated association, or trustee, in accordance with rules  
26 and regulations of the Attorney General.

27 (b) The Attorney General shall make rules and regulations as  
28 to the time for filing reports, the contents thereof, and the manner  
29 of executing and filing them. The Attorney General may classify  
30 trusts and other relationships concerning property held for a  
31 charitable purpose as to purpose, nature of assets, duration of the  
32 trust or other relationship, amount of assets, amounts to be devoted  
33 to charitable purposes, nature of trustee, or otherwise, and may  
34 establish different rules for the different classes as to time and  
35 nature of the reports required to ensure that the Attorney General  
36 shall receive reasonably current, periodic reports as to all charitable  
37 trusts or other relationships of a similar nature, which will enable  
38 the Attorney General to ascertain whether they are being properly  
39 administered, and to ensure that periodic reports shall not  
40 unreasonably add to the expense of the administration of charitable

1 trusts and similar relationships. The Attorney General may suspend  
2 the filing of reports as to a particular charitable trust or relationship  
3 for a reasonable, specifically designated time upon written  
4 application of the trustee filed with the Attorney General and after  
5 the Attorney General has filed in the register of charitable trusts  
6 a written statement that the interests of the beneficiaries will not  
7 be prejudiced thereby and that periodic reports are not required  
8 for proper supervision by the office of the Attorney General.

9 (c) A copy of an account filed by the trustee in any court having  
10 jurisdiction of the trust or other relationship, if the account  
11 substantially complies with the rules and regulations of the  
12 Attorney General, may be filed as a report required by this section.

13 (d) The first periodic written report, unless the filing thereof is  
14 suspended as herein provided, shall be filed not later than four  
15 months and 15 days following the close of the first calendar or  
16 fiscal year in which property is initially received. If any part of  
17 the income or principal of a trust previously established is  
18 authorized or required to be applied to a charitable purpose at the  
19 time this article takes effect, the first report shall be filed at the  
20 close of the calendar or fiscal year in which it was registered with  
21 the Attorney General or not later than four months and 15 days  
22 following the close of the calendar or fiscal period.

23 (e) Every charitable corporation, unincorporated association,  
24 and trustee required to file reports with the Attorney General  
25 pursuant to this section that receives or accrues in any fiscal year  
26 gross revenue of two million dollars (\$2,000,000) or more,  
27 exclusive of grants from, and contracts for services with,  
28 governmental entities for which the governmental entity requires  
29 an accounting of the funds received, shall do the following:

30 (1) Prepare annual financial statements using generally accepted  
31 accounting principles that are audited by an independent certified  
32 public accountant in conformity with generally accepted auditing  
33 standards. For any nonaudit services performed by the firm  
34 conducting the audit, the firm and its individual auditors shall  
35 adhere to the standards for auditor independence set forth in the  
36 latest revision of the Government Auditing Standards, issued by  
37 the Comptroller General of the United States (the Yellow Book).  
38 The Attorney General may, by regulation, prescribe standards for  
39 auditor independence in the performance of nonaudit services,  
40 including standards different from those set forth in the Yellow

1 Book. If a charitable corporation or unincorporated association  
2 that is required to prepare an annual financial statement pursuant  
3 to this subdivision is under the control of another organization,  
4 the controlling organization may prepare a consolidated financial  
5 statement. The audited financial statements shall be available for  
6 inspection by the Attorney General and by members of the public  
7 no later than nine months after the close of the fiscal year to which  
8 the statements relate. A charity shall make its annual audited  
9 financial statements available to the public in the same manner  
10 that is prescribed for IRS Form 990 by the latest revision of Section  
11 6104(d) of the Internal Revenue Code and associated regulations.

12 (2) If it is a corporation, have an audit committee appointed by  
13 the board of directors. The audit committee may include persons  
14 who are not members of the board of directors, but the member or  
15 members of the audit committee shall not include any members  
16 of the staff, including the president or chief executive officer and  
17 the treasurer or chief financial officer. If the corporation has a  
18 finance committee, it must be separate from the audit committee.  
19 Members of the finance committee may serve on the audit  
20 committee; however, the chairperson of the audit committee may  
21 not be a member of the finance committee and members of the  
22 finance committee shall constitute less than one-half of the  
23 membership of the audit committee. Members of the audit  
24 committee shall not receive any compensation from the corporation  
25 in excess of the compensation, if any, received by members of the  
26 board of directors for service on the board and shall not have a  
27 material financial interest in any entity doing business with the  
28 corporation. Subject to the supervision of the board of directors,  
29 the audit committee shall be responsible for recommending to the  
30 board of directors the retention and termination of the independent  
31 auditor and may negotiate the independent auditor's compensation,  
32 on behalf of the board of directors. The audit committee shall  
33 confer with the auditor to satisfy its members that the financial  
34 affairs of the corporation are in order, shall review and determine  
35 whether to accept the audit, shall assure that any nonaudit services  
36 performed by the auditing firm conform with standards for auditor  
37 independence referred to in paragraph (1), and shall approve  
38 performance of nonaudit services by the auditing firm. If the  
39 charitable corporation that is required to have an audit committee  
40 pursuant to this subdivision is under the control of another

1 corporation, the audit committee may be part of the board of  
2 directors of the controlling corporation.

3 (f) If, independent of the audit requirement set forth in paragraph  
4 (1) of subdivision (e), a charitable corporation, unincorporated  
5 association, or trustee required to file reports with the Attorney  
6 General pursuant to this section prepares financial statements that  
7 are audited by a certified public accountant, the audited financial  
8 statements shall be available for inspection by the Attorney General  
9 and shall be made available to members of the public in conformity  
10 with paragraph (1) of subdivision (e).

11 (g) The board of directors of a charitable corporation or  
12 unincorporated association, or an authorized committee of the  
13 board, and the trustee or trustees of a charitable trust shall review  
14 and approve the compensation, including benefits, of the president  
15 or chief executive officer and the treasurer or chief financial officer  
16 to assure that it is just and reasonable. This review and approval  
17 shall occur initially upon the hiring of the officer, whenever the  
18 term of employment, if any, of the officer is renewed or extended,  
19 and whenever the officer's compensation is modified. Separate  
20 review and approval shall not be required if a modification of  
21 compensation extends to substantially all employees. If a charitable  
22 corporation is affiliated with other charitable corporations, the  
23 requirements of this section shall be satisfied if review and approval  
24 is obtained from the board, or an authorized committee of the  
25 board, of the charitable corporation that makes retention and  
26 compensation decisions regarding a particular individual.

27 (h) (1) For the purposes of this subdivision, a "donor-advised  
28 fund sponsor" means any organization that is required to file reports  
29 with the Attorney General pursuant to this section and maintains  
30 one or more funds or accounts to which all of the following apply:

31 (A) The funds or accounts are separately identified by reference  
32 to contributions of a donor or donors.

33 (B) The funds or accounts are owned and controlled by the fund  
34 sponsor.

35 (C) A donor, or any person appointed or designated by such  
36 donor, has or reasonably expects to have, advisory privileges with  
37 respect to the distribution or investment of amounts held in the  
38 funds or accounts by reason of the donor's status as a donor.

39 (2) The Attorney General shall, pursuant to subdivision (b),  
40 adopt rules and regulations requiring that reports filed pursuant to

1 this section by a donor-advised fund sponsor disclose information  
2 about individual funds or accounts maintained by the donor-advised  
3 fund sponsor that will help the Attorney General ascertain whether  
4 those funds or accounts are being properly administered, including,  
5 ~~but not limited to any of the following:~~ *administered. The*  
6 *information disclosed pursuant to the rules and regulations adopted*  
7 *by the Attorney General shall include, but not be limited to, any*  
8 *of the following:*

9 (A) Whether the donor-advised fund sponsor has a publicly  
10 available policy with respect to donor-advised funds that are  
11 inactive, dormant, or do not make distributions during a specified  
12 period of time that does not exceed 36 months.

13 (B) A description of the donor-advised fund sponsor's policy  
14 for responding to funds described in subparagraph (A), including  
15 the manner in which the ~~charitable corporation~~ *donor-advised fund*  
16 *sponsor* monitors and enforces compliance, or a statement that no  
17 such policy is in effect.

18 (C) For the most recently completed accounting period, the  
19 value of assets invested by the donor-advised fund sponsor  
20 organization that were invested in mutual funds, exchange traded  
21 funds, or other investment vehicles or entities controlled by,  
22 controlling, or under common control with an entity that provides  
23 administrative or investment services to the donor-advised fund  
24 sponsor.