

12-11-2013

# Campaign Finance. Political Communications. Donor Disclosure. Initiative Statute.

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*Law Offices of***OLSON****HAGEL &****FISHBURN****LLP**

December 11, 2013

**VIA MESSENGER**

Ashley Johansson, Initiative Coordinator  
Office of the Attorney General  
1300 I Street  
Sacramento, CA 95814

**RECEIVED****DEC 11 2013**

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

**RE: NONPROFIT DONOR FULL DISCLOSURE ACT OF 2014**

Dear Ms. Johansson:

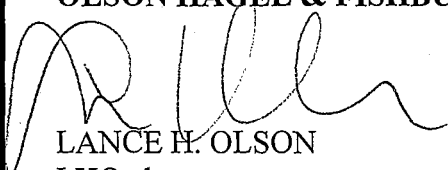
Pursuant to Elections Code section 9001, I am hereby submitting the enclosed initiative measure entitled the "Nonprofit Donor Full Disclosure Act of 2014" and request the Attorney General prepare a circulating title and summary for the measure.

A check for \$200 and the certifications required by sections 9001(b) and 9608 are also enclosed.

Please direct all future communications to my attention at:

OLSON, HAGEL & FISHBURN, LLP  
555 Capitol Mall, Suite 1425  
Sacramento, CA 95814  
PH: (916) 442-2952 / FX: (916) 442-1280

Very truly yours,

**OLSON HAGEL & FISHBURN, LLP**


LANCE H. OLSON  
LHO:ab

Enclosures: as stated above

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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 Government 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 "Nonprofit Donor Full Disclosure Act of 2014."

**Section 2.** The People find and declare all of the following:

- (a) Nonprofit organizations, including out of state organizations, are increasing their political and lobbying activities in California, and it is important to clarify how existing definitions and requirements for disclosure apply to these organizations to ensure that the public receives the required information in an accurate, timely and transparent manner.
- (b) Some donors to these types of organizations may attempt to conceal their identities by contributing through the organization, or organizations may work together to funnel certain funds in an attempt to avoid the disclosure of certain donors, which in many cases violates existing laws, but these laws may be more difficult to enforce when these organizations have not registered as political committees, lobbyist employers or otherwise complied with the disclosure requirements.
- (c) Recently the California Fair Political Practices Commission uncovered a vast campaign money laundering scheme by out of state nonprofit groups that funneled money into California through several other nonprofit groups to influence two statewide ballot measures just before the November 2012 election in an effort to hide the identity of the true source of the contributions. The Commission's investigation resulted in the largest fine ever imposed in the State of California for this type of violation. However, even this investigation did not uncover all of the donors because current laws are inadequate.
- (d) Many other nonprofit organizations receive large donations from unknown sources for the purpose of lobbying the Legislature and state government. Current law does not require such groups to disclose those large sources of contributions depriving the public of critical knowledge as to who is really attempting to influence our government.
- (e) The law should provide clear mandates to ensure that those organizations which make substantial expenditures in California to influence elections or influence the Legislature and state government must disclose their sources of revenues and expenditures.

**Section 3.** The intent of this act is to:

- (a) strengthen the campaign finance disclosure laws by enacting a definition of nonprofit organization, specific requirements for disclosure of a nonprofit organization's campaign

activities in California, requirements for sending of notices concerning the filing requirements when these organizations make political contributions to existing political committees, and requirements for additional certifications by nonprofit organizations who file major donor or independent expenditure campaign statements.

- (b) require persons engaged in issue advocacy and lobbying to disclose the top funding sources to the organization responsible for the communication on communications sent to the public related to pending legislation and administrative action, and issue advocacy.
- (c) adopt new laws that impose donor disclosure requirements on nonprofit organizations engaged in lobbying activities in California or engaged in issue advocacy.

**Section 4.** Section 82043.5 is added to the Government Code, to read:

*“Nonprofit organization” means an entity formed as a nonprofit corporation, an unincorporated association, a trust, a committee, or any other type of legal entity formed under the laws of any state or other jurisdiction for nonprofit purposes or, regardless of legal form, an entity that qualifies for or claims exemption from federal income tax under Internal Revenue Code section 501(a), 521, 526, 527, 528, or 115.*

**Section 5.** Section 84222 is added to the Government Code, to read:

*(a) A nonprofit organization operating for purposes other than making expenditures is a committee under section 82013(a) when it receives contributions at the threshold in section 82013(a). A nonprofit organization “receives contributions” under any of the following circumstances:*

- (1) The nonprofit organization is a political committee registered with the Federal Election Commission or a political committee registered with another state which makes expenditures at the threshold in section 82013(a);*
- (2) The nonprofit organization solicits and receives payments from donors for the expressed purpose of the nonprofit organization’s making expenditures;*
- (3) The nonprofit organization either:*
  - (A) Accepts payments with the condition, agreement or understanding with the donor that the payments are to be used for making expenditures; or*
  - (B) Has existing funds and the donor subsequently conditions the use of the funds for making expenditures, or a subsequent agreement or understanding is reached with the donor that the funds will be used for making expenditures. In such circumstances, the date of receipt is the date of the subsequent condition, agreement or understanding.*
- (4) The nonprofit organization makes expenditures totaling more than \$50,000 in a calendar year.*

(A) *Provided, however, this subdivision shall not apply to a nonprofit organization that has sufficient non-donor funds available to make the expenditures and that can demonstrate using any reasonable accounting method that it in fact used those funds to make the expenditures.*

(B) *For purposes of this subdivision "non-donor funds" means bequests, investment income ( including capital gains), income earned from providing goods, services or facilities ( whether related or unrelated to the nonprofit organization's program), sale of assets, and other receipts that are not donations.*

(b) *A nonprofit organization which is a committee pursuant to subdivision (a)(1) shall comply with the registration and reporting requirements of Chapter 4 of this title subject to the following:*

(1) *The nonprofit organization is not required to comply with Section 84211(k) for expenditures to influence federal or out-of-state elections, which shall instead be reported as a single expenditure and described as such on each campaign statement.*

(2) *A nonprofit organization registered with the Federal Election Commission is not subject to subdivisions (c), (d) and (f) of Section 84211 but shall disclose the total amount of contributions received pursuant to Section 84211(a), and shall disclose the nonprofit organization's name and identification number registered with the Federal Election Commission on each campaign statement.*

(c) *A nonprofit organization which is a committee pursuant to subdivisions (a)(2), (a)(3) or (a)(4) shall report the contributions which were received within the meaning of subdivisions (a)(2) or (a)(3) respectively, and for the balance of its expenditures, shall report donations as contributions based on a last in, first out accounting method.*

(1) *The term "last in, first out accounting method" as used in subdivision (c) means that expenditures are attributed to the nonprofit organization's donations in reverse chronological order beginning with the most recent donation or, if there are any prior expenditures, beginning with the most recent donation for which unattributed donations remain.*

(2) *A nonprofit organization using a last in, first out accounting method shall not, in any circumstance, be required to disclose total donations which exceed the nonprofit organization's total expenditures. When a nonprofit organization is reporting donations based on a last in, first out accounting method, it shall not be required to include the information required by Section 84211(f) for any donor who donates less than \$1,000 in a calendar year. The donations from any donor who restricts the donation for purposes other than expenditures, any donor who prohibits the nonprofit organization's use of its donation for expenditures or any*

donor which is a private foundation, as defined by subdivision (a) of Section 509 of the Internal Revenue Code, that provides a grant that does not constitute a taxable expenditure for purposes of paragraph (1) or (2) of Section 4945(d) of the Internal Revenue Code are not contributions and the organization shall not attribute expenditures to these donors.

- (3) A contributor or donor identified and reported pursuant to subdivision (c) may also become a committee if it is a nonprofit organization and receives contributions as defined in subdivision (a).
- (4) A nonprofit organization that qualifies as a committee pursuant to subdivision (a)(4) shall not be required to include contributions made or expenditures made in a prior calendar year on the reports filed for the calendar year in which the nonprofit organization qualifies as a committee.
- (5) The Commission shall adopt regulations establishing notice and reasonable filing deadlines for donors reported as contributors based on a last in, first out accounting method.

(d) This section shall not apply to any of the following:

- (1) A federal candidate campaign committee which is registered and filing reports pursuant to the Federal Election Campaign Act; or
- (2) The sponsor of a committee within the meaning of section 82048.7 that is a membership organization, makes all of its expenditures from funds derived from dues, assessments, fees and similar payments that do not exceed \$10,000 per calendar year from a single original source, and complies with all of the following requirements:
  - (A) The sponsored committee reports all expenditures made from the sponsor's treasury funds on reports filed by the committee. The sponsored committee's campaign statements shall disclose the sponsoring membership organization itself as the source of these funds and shall disclose all expenditures in the detail required by Section 84211(k) to meet this requirement;
  - (B) The sponsored committee reports all expenditures made in support of the committee by the sponsor, its intermediate units, and the members of such entities. A sponsoring organization makes contributions and expenditures in support of its sponsored committee when it provides the committee with money from its treasury funds, with the exception of establishment or administrative costs. With respect to dues, assessments, fees and similar payments channeled through the sponsor or an intermediate unit to a sponsored committee, the original source is the contributor; and

(C) *A responsible officer of the sponsor, as well as the treasurer of the sponsored committee, verifies the committee's campaign statement pursuant to section 81004.*

(e) *A nonprofit organization which does not qualify as a committee under subdivision (a) may qualify as a committee under subdivisions (b) or (c) of Section 82013.*

(f) *For purposes of this section "expenditures" mean contributions as defined by Section 82015 and independent expenditures as defined by Section 82031.*

(g) *The Commission shall adopt regulations defining "donation" for purposes of this section, which shall include, but not be limited to, cash, cash equivalents, membership dues or assessments and nonmonetary goods or assets that can be readily converted into cash.*

**Section 6.** Section 84105 of the Government Code is amended to read:

84105. A candidate or committee which receives contributions of five thousand dollars (\$5000) or more from any person shall inform the contributor *within two weeks of receipt of the contributions* that he or she may be required to file campaign reports *and shall include reference to the filing requirements for nonprofit organizations under section 84222.* ~~The notification shall occur within two weeks of receipt of the contributions but need not be sent to any contributor who has an identification number assigned by the Secretary of State issued pursuant to Section 84101.~~ *Provided, however, the notification shall occur within one week for any candidate or committee which receives a late contribution of \$10,000 or more. No notification required by this section shall be sent to any contributor who has an identification number assigned by the Secretary of State issued pursuant to Section 84101.*

**Section 7.** Section 81004 of the Government Code is amended to read as follows:

81004. (a) All reports and statements filed under this title shall be signed under penalty of perjury and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his knowledge it is true and complete.

(b) A report or statement filed by a committee which qualifies under subdivision (a) of Section 82013 shall be signed and verified by the treasurer, and a report or statement filed by any other person shall be signed and verified by the filer. If the filer is an entity other than an individual, the report or statement shall be signed and verified by a responsible officer of the entity or by an attorney or a certified public accountant acting as agent for the entity. *A report or statement filed by a nonprofit organization which qualifies as a committee under subdivision (b) or (c) of Section 82013 shall be signed and verified by a responsible officer of the nonprofit organization who shall also attest that the nonprofit organization has complied with the provisions of Section 84222. Every person who signs and verifies any report or statement required to be filed under this title which contains material matter which he knows to be false is guilty of perjury.*

**Section 8.** Section 85310.5 is added to the Government Code, to read:

*(a) Any person who makes a payment or a promise of payment totaling fifty thousand dollars (\$50,000) or more for a communication that clearly identifies a candidate for elective state office or clearly identifies an elective state official, but does not expressly advocate the election or defeat of the candidate or official, and that is disseminated, broadcast or otherwise published within forty five (45) days of an election at which the candidate or official will appear on the ballot, shall:*

*(1) Include a disclosure statement that identifies the following:*

*(A) The name of the person paying for the communication, preceded by the words "paid for by"; and*

*(B) The name of the persons, if any, from whom the person paying for the communication has received its two highest cumulative donations of fifty thousand dollars (\$50,000) or more, preceded by the words "major funding to this organization provided by",*

*(2) Comply with the requirements of Section 86115.5, and*

*(3) Comply with the requirements of Section 85310, if applicable.*

*(b) Donations of fifty thousand dollars (\$50,000) or more required to be disclosed pursuant to subdivision (a)(1)(B) of this section shall be disclosed as follows:*

*(1) Donations solicited and received for the expressed purpose of making communications described in subdivision (a) shall be disclosed first, if any.*

*(2) Donations accepted with the condition, agreement or understanding with the donor that the payments will be used for communications as described in subdivision (a), existing funds where the contributor or donor subsequently conditions use of the funds for communications described in subdivision (a), or existing funds where a subsequent agreement is reached with the donor that the funds will be used for communications described in subdivision (a) shall be disclosed next, if any.*

*(3) Donations aggregating fifty thousand dollars (\$50,000) or more during the 12 month period prior to dissemination of the communication shall be disclosed if additional donations are required to be disclosed after disclosing donors pursuant to paragraphs (1) and (2).*

*(c) In the event that more than two donors meet the disclosure threshold at identical donation levels, the highest and second highest shall be selected according to chronological sequence starting with the most recent donation of fifty thousand dollars (\$50,000) or more.*

*(d) Provided, however, a person required to disclose donors pursuant to subdivision (a)(1)(B) of this section shall not, in any circumstance, be required to disclose any donor who restricts the donation for purposes other than payments for communications described in subdivision (a) or any donor who prohibits the nonprofit organization's use of its donation for payments for communications described in subdivision (a).*

*(e) The Commission shall adopt regulations regarding the appearance of the disclosure required by subdivision (a)(1) and the circumstances and timing requiring amendments to the disclosure required by subdivision (a)(1).*

**Section 9.** Section 86115.5 is added the Government Code, to read:



86115.5 (a) Subject to the exceptions in Section 86300, nonprofit organizations that qualify for or claim exemption from federal income tax as social welfare organizations under Internal Revenue Code section 501(c)(4) shall disclose the information described in subdivision (b) of this section if they make payments to influence legislative or administrative action or payments to disseminate communications described in section 85310.5 totaling four hundred thousand dollars (\$400,000) or more during a legislative session or seventy-five thousand dollars (\$75,000) or more in a calendar quarter. The nonprofit organization shall file the reports required by this section commencing with the first quarter in which cumulative payments reach four hundred thousand dollars (\$400,000) or more during a legislative session or seventy-five thousand dollars (\$75,000) or more during a calendar quarter, whichever occurs first, and for every subsequent calendar quarter during the same legislative session where additional payments to influence legislative or administrative action or payments to disseminate communications described in section 85310.5 totaling seventy-five thousand dollars (\$75,000) or more are made.

(b) The reports required by subdivision (a) shall disclose donations aggregating \$10,000 or more from a single source during the current and immediately preceding legislative session and the total of donations of less than \$10,000. The disclosure for each donation of \$10,000 or more shall include the date of the donation or donations, the amount of the donation or donations, and the donor's name, address and, if from an individual, the donor's occupation and employer.

(1) A nonprofit organization reporting under this subdivision shall not, in any circumstance, be required to disclose total donations which exceed the nonprofit organization's total payments to influence legislative or administrative action or payments to disseminate communications described in section 85310.5 for the period covered, as described in subdivision (c).

(2) Donations shall be identified and disclosed pursuant to this subdivision as follows:

(A) Donations solicited and received for the expressed purpose of making the payments described in subdivision (a) shall be disclosed first, if any.

(B) Donations accepted with the condition, agreement or understanding with the donor that the donations will be used to make the payments described in subdivision (a), existing funds where the donor subsequently conditions use of the donated funds for making the payments described in subdivision (a), or existing funds where a subsequent agreement is reached with the donor that the donated funds will be used for making the payments described in subdivision (a) shall be disclosed next, if any.

(C) For the balance of payments described in subdivision (a) during the period covered, the nonprofit organization shall disclose donations based on a last in, first out accounting method. The term "last in, first out accounting method" as used in this subdivision means that total payments to influence legislative or administrative action or payments to disseminate communications described in section 85310.5 during the period covered, as described in subdivision (c), are attributed to the nonprofit organization's donations as of the last day of the period covered in reverse chronological order beginning with the most recent donation or, if there are any prior payments that have already been attributed

during the legislative session, beginning with the most recent donation for which unattributed donations remain.

(3) A person reporting donations based on the last in, first out accounting method shall not be required to disclose any donor who restricts the donation for purposes other than payments to influence legislative or administrative action or payments for communications described in Section 85310.5 or any donor who prohibits the nonprofit organization's use of its donation for payments to influence legislative or administrative action or payments for communications described in Section 85310.5.

(4) A nonprofit organization shall not be required to disclose any non-donor funds pursuant to subdivision (b) of this section. For purposes of this subdivision "non-donor funds" means bequests, investment income (including capital gains), income earned from providing goods, services or facilities (whether related or unrelated to the nonprofit organization's program), sale of assets, or other receipts that are not donations.

(c) Every nonprofit organization described in subdivision (a) of this section shall disclose the information required by subdivision (b) on reports, prescribed by the Commission, during the month following the calendar quarter. For the first report required by subdivision (a) during any legislative session, the period covered begins January 1 of the odd-numbered year and ends the last day of the calendar quarter. For all subsequent reports during the same legislative session, the period covered begins the first day of the calendar quarter and ends the last day of the calendar quarter.

(d) For purposes of this section, the legislative session begins January 1 of each odd-numbered year and ends on the last day of each even-numbered year.

(e) For purposes of this section, "payments to influence legislative or administrative action" does not include payments described in section 82045(c).

(f) This section shall not apply to a committee as defined in 82013(a) or a federal campaign committee which is registered and filing reports pursuant to the Federal Election Campaign Act.

(g) The Commission may adopt regulations consistent with this section. The Commission shall adopt regulations defining "donation" for purposes of this section, which shall include, but not be limited to, cash, cash equivalents, membership dues or assessments and nonmonetary goods or assets that can be readily converted into cash.

**Section 10.** Section 86119 is added to the Government Code, to read:

86119 (a) Each person who makes a payment or a promise of a payment totaling fifty thousand dollars (\$50,000) or more to send any communication soliciting or urging persons to enter into direct communication with a legislative, agency, or elective state official for the primary purpose of influencing legislative or administrative action shall include a disclosure statement that identifies the following:

(1) The name of the person paying for the communication, preceded by the words "paid for by"; and

(2) The name of the persons from whom the person paying for the communications has received its two highest cumulative donations of fifty thousand dollars (\$50,000) or more during the 12-month period prior to the dissemination of the communication, preceded by the words "major funding to this organization provided by".

(b) For purposes of this section the term communication shall include the following:

- (1) A broadcast, cable or satellite communication.
- (2) A newspaper, magazine or outdoor advertising.
- (3) A mass mailing of 500 or more identical or substantially similar pieces of mail.
- (4) Any paid electronic media advertising.
- (5) A telephone, facsimile or electronic message intended for delivery in substantially similar form to 500 or more recipients.

(c) Donations of fifty thousand dollars (\$50,000) or more required to be disclosed pursuant to subdivision (a)(2) of this section shall be disclosed as follows:

- (1) Donations solicited and received for the expressed purpose of making communications described in subdivision (a) shall be disclosed first, if any.
- (2) Donations accepted with the condition, agreement or understanding with the donor that the payments will be used for communications as described in subdivision (a), existing funds where the contributor or donor subsequently conditions use of the funds for communications described in subdivision (a), or existing funds where a subsequent agreement is reached with the donor that the funds will be used for communications described in subdivision (a) shall be disclosed next, if any.
- (3) Donations aggregating fifty thousand dollars (\$50,000) or more during the 12 month period prior to dissemination of the communication shall be disclosed if additional contributions or donations are required to be disclosed after disclosing donors pursuant to paragraphs (1) and (2).

(d) In the event that more than two donors meet the disclosure threshold at identical donation levels, the highest and second highest shall be selected according to chronological sequence starting with the most recent donation of fifty thousand dollars (\$50,000) or more.

(e) Provided, however, a person required to disclose donations pursuant to subdivision (a)(2) of this section shall not, in any circumstance, be required to disclose any donor who restricts the donation for purposes other than payments for communications described in subdivision (a) or any donor who prohibits the nonprofit organization's use of its donation for payments for communications described in subdivision (a).

(f) The provisions of this section shall not apply to any communication disseminated to members, employees or shareholders or families of members, employees, or shareholders of an organization.

(g) The Commission shall adopt regulations defining the terms used in this section, the appearance of the disclosure required by subdivision (a), and the circumstances and timing requiring amendments to the disclosure required by subdivision (a). Such definitions shall be consistent, to the extent possible, with existing Commission regulations defining similar terms used in this title. The Commission shall adopt regulations defining "donation" for purposes of this section, which shall include, but not be limited to, cash, cash equivalents, membership dues or assessments and nonmonetary goods or assets that can be readily converted into cash.

## **Section 11. Competing Initiative**

In the event that this measure and another measure that imposes donor disclosure requirements upon nonprofit organizations shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this

measure. In the event this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

**Section 12. 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.

**Section 13. Amendment**

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 in each house of the Legislature by a two thirds vote of the membership concurring and signed by the Governor, but only if at least 12 days prior to passage in each house the bill in its final form has been delivered to the Fair Political Practices Commission for distribution to the news media and to every person who has requested the Commission to send copies of such bills to him or her, and only if consistent with or to further the purposes of the Political Reform Act.