

HOUSE BILL REPORT

HB 2313

As Reported by House Committee On:
Judiciary

Title: An act relating to electronic filing and registration.

Brief Description: Allowing electronic filing and registration for charities, corporations, and partnerships.

Sponsors: Representative Lantz; by request of Secretary of State.

Brief History:

Committee Activity:

Judiciary: 1/15/02, 1/22/02 [DP].

Brief Summary of Bill

- Authorizes the Secretary of State to adopt rules to implement electronic filing of documents by nonprofit corporations and limited liability companies.
- Amends the Charitable Solicitations Act to add a definition of "signed" that will facilitate any electronic filing system adopted by the Secretary of State and to transfer the authority to impose a civil penalty for a violation of the act from the Attorney General to the Secretary of State.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Lantz, Chair; Hurst, Vice Chair; Carrell, Ranking Minority Member; Boldt, Dickerson, Esser, Jarrett, Lovick and Lysen.

Staff: Edie Adams (786-7180).

Background:

The Secretary of State is responsible for receiving and maintaining a variety of documents, including a number of documents that various business entities are required to file. The Secretary of State may, for the purposes of the corporation filing statutes, have a filing system that uses microfilm, microfiche or other methods of reduced-format document recording. The Secretary of State may eliminate any requirement for a

duplicate original filing copy and may establish reasonable requirements for any reduced-format filing system.

The Nonprofit Corporation Act (NCA) and the Limited Liability Company Act (LLCA) require these entities to file a number of documents with the Secretary of State. Generally, duplicate originals of these documents must be submitted and there are requirements that many of these documents be signed by specified persons.

The Charitable Solicitations Act (CSA) requires all charitable organizations and commercial fund raisers to register with the Secretary of State prior to conducting charitable solicitations and to register any contract for solicitations. These registrations must be submitted in the form prescribed by rule by the Secretary of State and must be signed by a specified officer of the entity. The Secretary of State may impose a late filing fee on a charitable organization or fund raiser that fails to register after notification by the Secretary of State.

In addition to registration requirements, the CSA places certain conditions and requirements on solicitations by charitable organizations and commercial fund raisers, including detailed disclosure requirements and prohibitions on certain kinds of representations. Any person who violates the CSA or who gives false or incorrect information in filing statements is guilty of a criminal offense.

The Attorney General may enforce the provisions of the CSA through a variety of means, including by imposition of a civil penalty of not more than one thousand dollars. A person who is assessed a civil penalty may request a hearing on the penalty to the Attorney General. The Attorney General may enforce a final and unappealable order for an assessment by court action.

Summary of Bill:

Amendments are made to the NCA, the LLCA, and the CSA to authorize or facilitate electronic filing with the Secretary of State. In addition, the CSA is amended to allow the Secretary of State to impose an assessment on any person who violates the CSA.

The Secretary of State's authority to use reduced-format filing systems is expanded to include electronic or online filing and is extended to any filing and registration statutes, not just corporation statutes. For an electronic or online filing system, the Secretary of State may establish reasonable requirements, such as signature technology, file format and type, and types of filing that may be completed electronically.

The NCA and the LLCA are amended to authorize the Secretary of State to adopt rules permitting electronic filing of documents. The rules will provide when electronic filing of documents is permitted, how the documents will be filed and how the Secretary of

State will return filed documents. In addition, the rules may impose additional requirements related to the electronic filing process. Unless the rules of the Secretary of State require otherwise, a document submitted for filing must be accompanied by an exact or conformed copy.

The NCA's requirements that a nonprofit corporation submit, and the Secretary of State return, duplicate originals of any documents that are required to be filed are removed. The Secretary of State must return an exact or conformed copy of these documents to the corporation.

The LLCA's extensive filing requirements are amended to authorize, as an alternative, that filings must be in compliance with electronic filing rules adopted by the Secretary of State.

The CSA is amended to facilitate electronic filing by adding a definition of "signed," which means hand-written, or in the manner specified by the Secretary of State in any rules adopted to facilitate electronic filing for charitable organizations.

The CSA is also amended to provide that the Secretary of State, rather than the Attorney General, is authorized to impose a civil penalty on an entity that violates a provision of the CSA.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill gives the Secretary of State the ability to institute an electronic filing system without specifying all the details since technology is always moving. The bill gets rid of impediments to electronic filing, such as signature and duplicate original requirements, that are contained in the current law. Electronic filing will make filing easier, especially for people who are located far away. With respect to the ability of the Secretary of State to impose an assessment under the Charitable Solicitations Act for a violation of that act, the Attorney General does not use this mechanism for enforcement and it is more appropriately with the Secretary of State's office since it would then go through the Administrative Procedure Act process.

Testimony Against: None.

Testified: Mike Ricchio, Secretary of State.