

By: Eltife

S.B. No. 1215

A BILL TO BE ENTITLED

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AN ACT

relating to financial records and to audits or reviews of certain charitable nonprofit corporations; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections A and B, Article 2.23A, Texas Non-Profit Corporation Act (Article 1396-2.23A, Vernon's Texas Civil Statutes), are amended to read as follows:

A. A corporation shall maintain current true and accurate financial records with full and correct entries made with respect to all financial transactions of the corporation, including all revenue [~~income~~] and expenditures, in accordance with generally accepted accounting principles [~~practices~~].

B. Based on these records, the board of directors shall annually prepare and [~~or~~] approve [~~a report of~~] the financial statements [~~activity~~] of the corporation for the preceding year. The financial statements [~~report~~] must conform with generally accepted [~~to~~] accounting principles [~~standards as promulgated by the American Institute of Certified Public Accountants~~] and must include a statement of financial position and the related statements of activities by functional classifications, a cash flow statement [~~support, revenue, and expenses and changes in fund balances~~], and a statement of functional expenses [~~, and balance sheets for all funds~~].

SECTION 2. The Texas Non-Profit Corporation Act (Article

1 1396-1.01 et seq., Vernon's Texas Civil Statutes) is amended by  
2 adding Article 2.23C to read as follows:

3 Art. 2.23C. FINANCIAL STATEMENTS AND AUDIT OF CERTAIN  
4 CHARITABLE CORPORATIONS. A. A charitable corporation shall have  
5 the corporation's financial statements required by Section B,  
6 Article 2.23A of this Act, for the preceding fiscal year audited or  
7 reviewed by an independent certified public accountant in  
8 accordance with generally accepted accounting principles. An audit  
9 is required for a charitable corporation that receives or accrues a  
10 total gross revenue of \$750,000 or more. A review is required for a  
11 charitable corporation that receives or accrues a total gross  
12 revenue of \$500,000 or more but less than \$750,000. For the  
13 purposes of this section, a corporation's total gross revenue does  
14 not include grants from and proceeds of contracts with a  
15 governmental agency or entity that requires an accounting for money  
16 received. A charitable corporation not required by this section to  
17 have the corporation's financial statements audited or reviewed may  
18 choose to have such an audit or review conducted.

19 B. If a charitable corporation is under the control of  
20 another corporation, the controlling corporation may prepare  
21 consolidated financial statements to satisfy the requirements of  
22 Section B, Article 2.23A of this Act, for the controlled  
23 corporation.

24 C. A charitable corporation required to have an audit or  
25 review of the corporation's financial statements under Section A of  
26 this article shall make the financial statements and the audit or  
27 review report available for inspection by the attorney general and

1 the public at the corporation's registered office or principal  
2 office in this state as provided by Article 2.23A of this Act and in  
3 the manner prescribed for Internal Revenue Service Form 990 by  
4 Section 6104(d), Internal Revenue Code of 1986. The financial  
5 statements and audit or review report must be completed and made  
6 available before or by the following deadline:

7 (1) for financial statements, not later than nine  
8 months subsequent to the end of the fiscal year for which the  
9 financial statements relate; and

10 (2) for the audit or review report, not later than nine  
11 months subsequent to the end of the fiscal year for which the audit  
12 or review report relates.

13 D. The board of directors of a charitable corporation  
14 required to have an audit or review of the corporation's financial  
15 statements under Section A of this article shall review and  
16 determine whether to accept the audit or review.

17 E. A corporation that does not have an audit or review  
18 conducted as provided by Section A of this article commits an  
19 offense. An offense under this section may be punishable by a fine  
20 of not less than \$100 or more than \$1,000. Each day the violation  
21 continues constitutes a separate offense.

22 SECTION 3. Section 22.352, Business Organizations Code, is  
23 amended to read as follows:

24 Sec. 22.352. FINANCIAL RECORDS AND ANNUAL REPORTS. (a) A  
25 corporation shall maintain current and accurate financial records  
26 with complete entries as to each financial transaction of the  
27 corporation, including revenue [~~income~~] and expenditures, in

1 accordance with generally accepted accounting principles.

2 (b) Based on the records maintained under Subsection (a),  
3 the board of directors of the corporation shall annually prepare or  
4 approve [~~a~~] financial statements [~~report~~] for the corporation for  
5 the preceding year. The financial statements [~~report~~] must conform  
6 to generally accepted accounting principles [~~standards as adopted~~  
7 ~~by the American Institute of Certified Public Accountants~~] and must  
8 include:

9 (1) a statement of financial position [~~support,~~  
10 ~~revenue, and expenses~~];

11 (2) a statement of activities by functional  
12 classifications [~~changes in fund balances~~];

13 (3) a cash flow statement; and

14 (4) a statement of functional expenses [~~, and~~

15 [~~(4) a balance sheet for each fund~~].

16 SECTION 4. Subchapter H, Chapter 22, Business Organizations  
17 Code, is amended by adding Section 22.3551 to read as follows:

18 Sec. 22.3551. FINANCIAL STATEMENTS AND AUDIT OF CERTAIN  
19 CHARITABLE CORPORATIONS. (a) A charitable corporation shall have  
20 the corporation's financial statements required by Section 22.352  
21 for the preceding fiscal year audited or reviewed by an independent  
22 certified public accountant in accordance with generally accepted  
23 accounting principles. An audit is required for a charitable  
24 corporation that receives or accrues a total gross revenue of  
25 \$750,000 or more. A review is required for a charitable corporation  
26 that receives or accrues a total gross revenue of \$500,000 or more  
27 but less than \$750,000. For the purposes of this subsection, a

1 corporation's total gross revenue does not include grants from and  
2 proceeds of contracts with a governmental agency or entity that  
3 requires an accounting for money received. A charitable  
4 corporation not required by this subsection to have the  
5 corporation's financial statements audited or reviewed may choose  
6 to have such an audit or review conducted.

7 (b) If a charitable corporation is under the control of  
8 another corporation, the controlling corporation may prepare  
9 consolidated financial statements to satisfy the requirements of  
10 Section 22.352 for the controlled corporation.

11 (c) A charitable corporation required to have an audit or  
12 review of the corporation's financial statements under Subsection  
13 (a) shall make the financial statements and the audit or review  
14 report available for inspection by the attorney general and the  
15 public at the corporation's registered office or principal office  
16 in this state as provided by Section 22.352 and in the manner  
17 prescribed for Internal Revenue Service Form 990 by Section  
18 6104(d), Internal Revenue Code of 1986. The financial statements  
19 and audit or review report must be completed and made available  
20 before or by the following deadline:

21 (1) for financial statements, not later than nine  
22 months subsequent to the end of the fiscal year for which the  
23 financial statements relate; and

24 (2) for the audit or review report, not later than nine  
25 months subsequent to the end of the fiscal year for which the audit  
26 or review report relates.

27 (d) The board of directors of a charitable corporation

1 required to have an audit or review of the corporation's financial  
2 statements under Subsection (a) shall review and determine whether  
3 to accept the audit or review.

4 (e) A corporation that does not have an audit or review  
5 conducted as provided by Subsection (a) commits an offense. An  
6 offense under this subsection may be punishable by a fine of not  
7 less than \$100 nor more than \$1,000. Each day the violation  
8 continues constitutes a separate offense.

9 SECTION 5. This Act applies to a nonprofit corporation  
10 beginning on the date of the end of the corporation's first fiscal  
11 year ending on or after September 1, 2005.

12 SECTION 6. (a) Except as provided by Subsection (b) of  
13 this section, this Act takes effect September 1, 2005.

14 (b) Sections 3 and 4 of this Act take effect January 1, 2006.