

By: Eltife

S.B. No. 1215

A BILL TO BE ENTITLED

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

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

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

C. A charitable corporation required to have an audit or review of the corporation's financial statements under Section A of this article shall make the financial statements and the audit or review report available for inspection by the attorney general and the public at the corporation's registered office or principal office in this state as provided by Article 2.23A of this Act and in the manner prescribed for Internal Revenue Service Form 990 by Section 6104(d), Internal Revenue Code of 1986. The financial

statements and audit or review report must be completed and made available before or by the following deadline:

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

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

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

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

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

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

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

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

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

(3) a cash flow statement; and

(4) a statement of functional expenses [~~+~~ and [~~4~~] a balance sheet for each fund].

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

Sec. 22.3551. FINANCIAL STATEMENTS AND AUDIT OF CERTAIN CHARITABLE CORPORATIONS. (a) A charitable corporation shall have the corporation's financial statements required by Section 22.352 for the preceding fiscal year audited or reviewed by an independent certified public accountant in accordance with generally accepted accounting principles. An audit is required for a charitable corporation that receives or accrues a total gross revenue of \$750,000 or more. A review is required for a charitable corporation that receives or accrues a total gross revenue of \$500,000 or more but less than \$750,000. For the purposes of this subsection, a corporation's total gross revenue does not include grants from and proceeds of contracts with a governmental agency or entity that requires an accounting for money received. A charitable corporation not required by this subsection to have the corporation's financial statements audited or reviewed may choose to have such an audit or review conducted.

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

(c) A charitable corporation required to have an audit or review of the corporation's financial statements under Subsection (a) shall make the financial statements and the audit or review report available for inspection by the attorney general and the public at the corporation's registered office or principal office in this state as provided by Section 22.352 and in the manner prescribed for Internal Revenue Service Form 990 by Section 6104(d), Internal Revenue Code of 1986. The financial statements

and audit or review report must be completed and made available before or by the following deadline:

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

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

(d) The board of directors of a charitable corporation required to have an audit or review of the corporation's financial statements under Subsection (a) shall review and determine whether to accept the audit or review.

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

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

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

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