

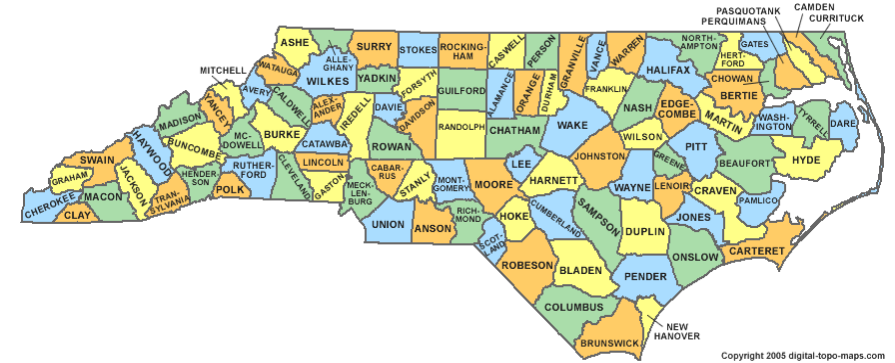
Top 10 New State Laws Affecting Nonprofits in 2023

David Heinen

North Carolina Center *for* Nonprofits



Connect Learn Advocate



Important Disclaimers

If you can read this fine print, you are sitting too close to your screen!





Dad's boring presentation



Dad's boring presentation + memes





1. Charitable solicitation



TIME FOR A HAPPY DANCE!



North Carolina



Center for Nonprofits

Many missions | 100 counties | One voice

Charitable solicitation

Filing requirements

- License required for most nonprofits
- Exemption for nonprofits that:
 - Less than **\$50,000** in grants and contributions per year; and
 - Do not compensate officers, directors, or professional fundraisers
- File with N.C. Secretary of State

North Carolina



Center for Nonprofits

Charitable solicitation

Due dates and extensions of filing deadline

- Due date – Generally the same as Form 990
- Form 990 – Six month automatic extension
- Old law – Charitable solicitation license extension of 60 days
- ***New law – Charitable solicitation license deadline can be extended to be the same as the IRS extended deadline for 990***

North Carolina



Center for Nonprofits

2. Nonprofit raffles



Nonprofit raffles

- Nonprofits are allowed to conduct raffles as fundraising events
- At least 90% of net proceeds must be used for nonprofit's mission-related purposes
- Nonprofit can't pay a person to conduct a raffle or rent a space where a raffle is conducted

North Carolina



Center for Nonprofits

Nonprofit raffles

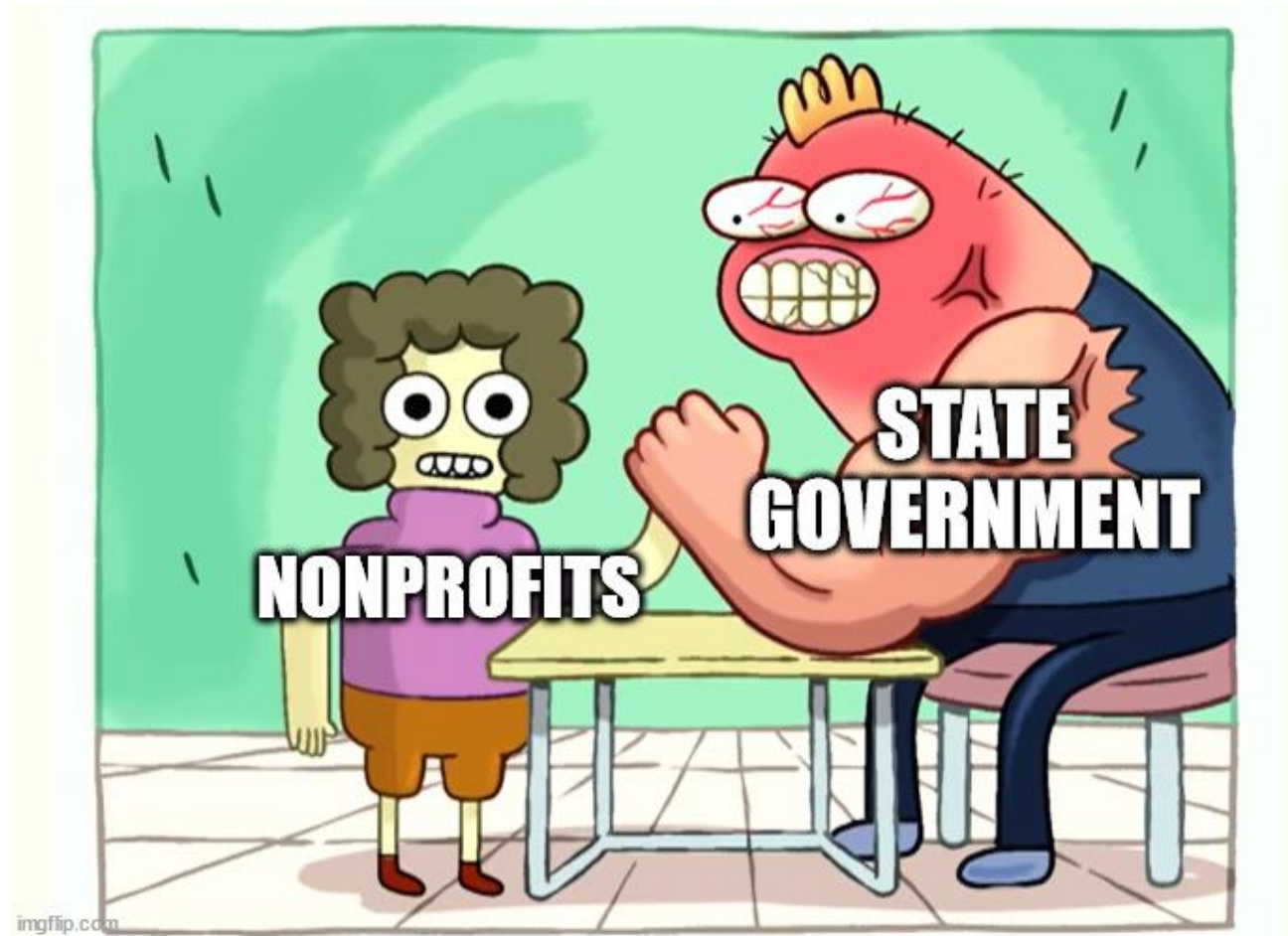
- As of October 10, 2023, nonprofits may:
 - Conduct up to **five** raffles per year (had been four)
 - Have maximum cash prize of a raffle of \$250,000 or \$125,000 in merchandise
 - Include real estate valued at up to **\$2.25 million** (had been \$500,000)

North Carolina



Center for Nonprofits

3. Contracts with DHHS



North Carolina



Center for Nonprofits

Many missions | 100 counties | One voice

Rights for nonprofits

- Two-year contracts with opportunity for extension for a third year for nonprofits receiving recurring funding
- Three-month continuity of services extensions for nonprofits operating for five years, unqualified report on audit, and track record of timely reporting and compliance
- *De minimis* indirect cost rate of 10% of modified total direct costs – at discretion of DHHS

North Carolina



Center for Nonprofits

4. Pass-through federal funding



Rights for nonprofits with federal grants

- *De minimis* indirect cost rate of 10% of modified total direct costs – at discretion of DHHS
- ***Proposed change***
 - ***Increase this to 15%***
 - ***Prevent agencies from forcing nonprofits to accept lower rates***
 - ***Clarify that state and local governments need to apply federal indirect cost rates on pass-through grants***

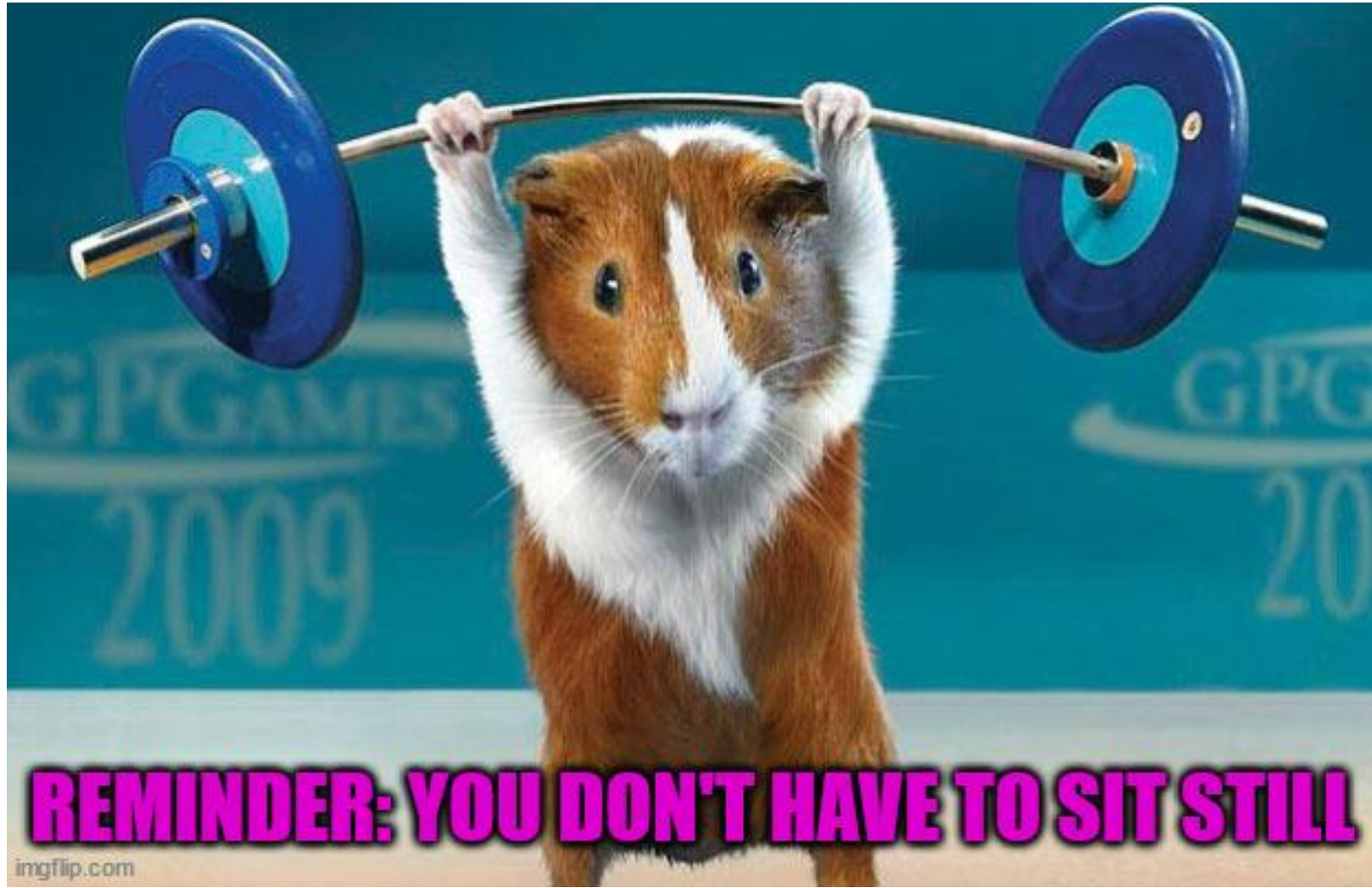
Rights for nonprofits with federal grants

- Federal single audit threshold - \$750,000
- ***Proposed change - Increase this to ...***



Rights for nonprofits with federal grants

- *Other proposed changes*
 - *Require federal agencies to eliminate program reports that are not necessary for effecting monitoring of grants*
 - *Improvements to Notice of Funding Opportunities*



5. North Carolina sales tax



NC sales tax: Annual sales exemption

- Nonprofits generally must collect and remit sales tax when selling goods and certain services
- Exemption for annual sales events
 - Annual event *(can be up to six per year)*
 - Proceeds go towards nonprofit's mission
 - Products delivered within 60 days of beginning of solicitation period

Sales tax refunds

- Nonprofits pay sales and use tax on purchases
- Semiannual refunds
 - File by October 15 and April 15
 - Use Form E-585 to apply for a refund, get an account number, and file for your semi-annual refunds
- \$45 million annual cap on refunds per nonprofit

North Carolina



Center *for* Nonprofits

Sales tax refunds

Nonprofits eligible for refunds

- Most 501(c)(3)s, with the exception of those with the following NTEE classifications:
 - Community improvement and capacity building
 - Public and societal benefit
 - Mutual and membership benefit



Sales tax on admission fees

- Admission fees to entertainment and live events are subject to sales tax
- Includes charges for:
 - Live performance or live event *the purpose of which is entertainment*
 - Movies and films
 - Museums, cultural sites, gardens, shows, and similar attractions
 - Guided tours of any of these venues

North Carolina



Center for Nonprofits

Sales tax on admission fees

- Exemptions and exceptions:
 - Tax-deductible contributions to 501(c)(3) nonprofits
 - The tax-deductible portion of an admission fee
 - Fees for participatory events
 - Fees for educational events, regardless of whether some entertainment is included
 - Events sponsored by nonprofits with no staff that pay nobody for any part of the events

Possible future sales tax law changes

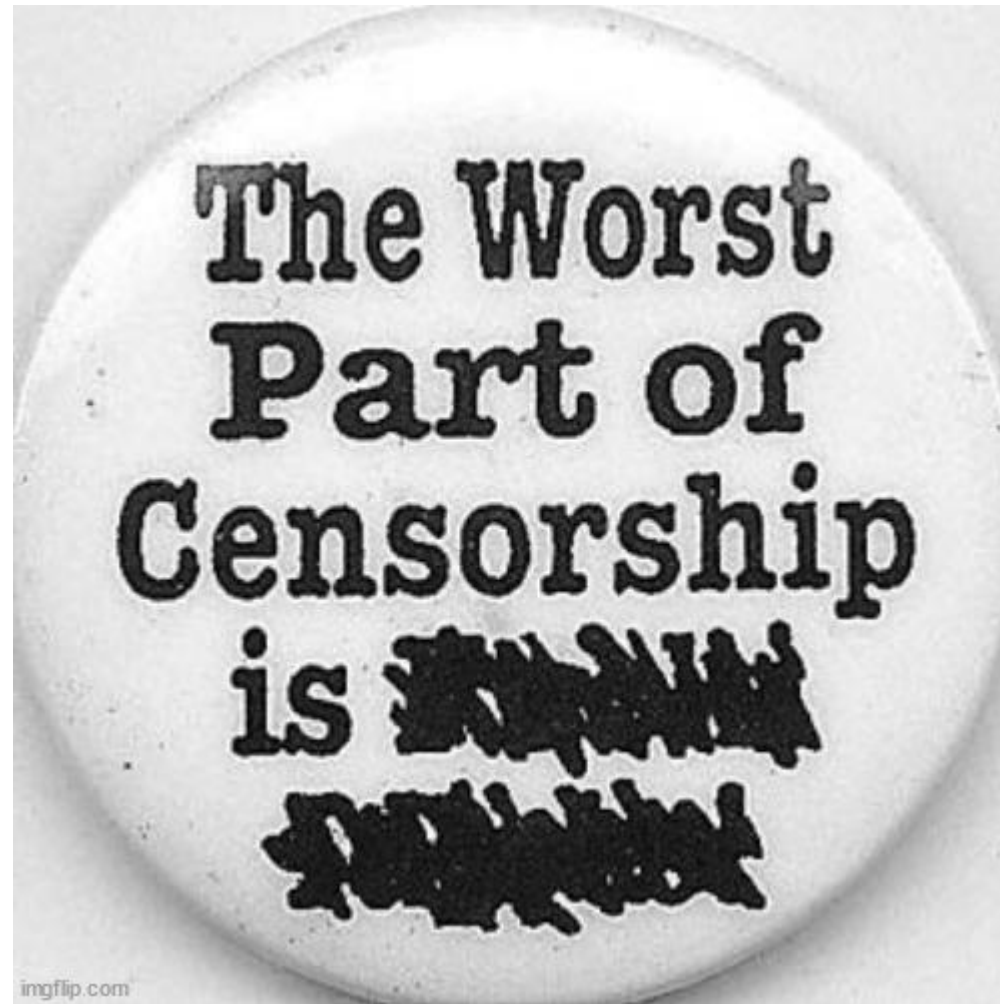
- Point-of-sale exemption from sales tax on purchases
- Exemption of most nonprofit fundraising events from sales tax on admission fees

North Carolina



Center *for* Nonprofits

6. State law on training programs for state employees



New workplace training law

- “State employee training programs” cannot promote 13 concepts – mostly related to race and sex
- Effective date: December 1, 2023
- Does not apply to *nonprofit employees* attending training programs
- No criminal penalties

North Carolina



Center for Nonprofits

State employee training programs

- No clear definition in state law
- Nonprofit considerations?
 1. Primary audience
 2. Number of state employee participants
 3. All or most employees of a state office participating
 4. Whether state pays for employees to attend
 5. Formal contractual relationship

Key concepts for nonprofits to consider

“An individual, solely by virtue of his or her race or sex, is inherently racist, sexist, or oppressive.”

Structural or systemic racism?

Key concepts for nonprofits to consider

“An individual, solely by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same sex.”

“White supremacy culture”?

Key concepts for nonprofits to consider

“Particular character traits, values, moral or ethical codes, privileges, or beliefs should be ascribed to a race or sex or to any individual because of the individual’s race or sex.”

“White privilege”?

Tips for nonprofits offering EDI trainings

1. Read the law narrowly
2. Review content outlines
3. Work with trainers to make necessary modifications
4. Train your trainers
5. Clear disclaimer that the state doesn't endorse the training
6. Consider having an attorney review your training programs

North Carolina



Center *for* Nonprofits

REMINDER: IT'S OKAY TO TAKE A STRETCH BREAK!



North Carolina



Center for Nonprofits

Many missions | 100 counties | One voice

7. Election laws and nonprofits



New state election laws

- Photo ID for voting
 - Free IDs available at driver's license offices and local elections boards
- Absentee voting
 - Deadline for receipt of mailed ballots is 5 p.m. on Election Day – no three-day grace period
- Nonprofit funding of election boards prohibited
 - Limited exceptions of in-kind donation of facility for voting site, in-kind donation of food or beverages for polling place, and pens/PPE for voting sites

North Carolina



Center *for* Nonprofits

8. State budget earmarks for nonprofits





When should nonprofits expect payment?

- First payments are due within 100 days of state budget becoming law
 - Translation: Early January, 2024
- Single payment for nonprofits receiving \$100,000 or less
- Quarterly or monthly payments for nonprofits receiving more than \$100,000
 - Final payments no later than July 3, 2024

North Carolina



Center *for* Nonprofits

Basic requirements for nonprofits with state funding

- Certification that funds were used for purposes for which they were awarded
- Accounting of how funds were used
- Copy of conflict-of-interest policy
- Certification of no overdue federal, state, or local taxes

North Carolina



Center for Nonprofits

9. Legislative oversight of nonprofits with state funding



North Carolina

Center for Nonprofits

Many missions | 100 counties | One voice

GovOps

- Brief history of GovOps and program evaluation
- Authority over any “non-State entity receiving public funds”
 - Translation: Nonprofits with any state or local funding
- GovOps authority includes:
 - Study efficiency, economy, effectiveness of nonprofits
 - Evaluate implementation of public policies by nonprofits
 - Investigate “misfeasance, malfeasance, nonfeasance, mismanagement, waste, abuse, or illegal conduct” of nonprofits

North Carolina



Center *for* Nonprofits

GovOps

- GovOps authority includes:
 - Access any documents of nonprofits and state subcontractors
 - Compel attendance of nonprofit officers or employees at legislative oversight meetings
 - Access any building or facility owned or leased by a nonprofit used for publicly-funded services or “reasonably related” to government funds
 - Determine which documents and investigations are or are not confidential

North Carolina



Center for Nonprofits

GovOps

- Criminal penalties – Class 2 misdemeanor for concealing, falsifying, or refusing to provide GovOps with any document, information, or access to a building or facility
- Nonprofit considerations
 - Be aware of this new authority
 - Minimize likelihood of investigation
 - Reply to GovOps information/document/access requests
 - Possibly notify general liability insurance provider

North Carolina



Center *for* Nonprofits

10. Nonprofit lobbying laws

**NOBODY WILL
NOTICE...**



imgflip.com

North Carolina



Center for Nonprofits

Many missions | 100 counties | One voice

*What is lobbying?**

Influencing *legislation or executive action* at the state level and developing goodwill with state officials

*** For purposes of NC lobbying statute**

State lobbying reporting

- Lobbyist principals – nonprofit organizations
- Lobbyists – individuals who lobby on behalf of nonprofits

Who is a lobbyist for a nonprofit?

1. A contractor who engages in any lobbying; OR
2. A nonprofit employee who spends at least 5% of their time lobbying state officials

Does your nonprofit have a lobbyist?

Yes



The state lobbying registration and reporting laws apply to your organization

No



You can leave for the next 3 minutes . . . unless you are here for CLE credit

State lobbying registration

- Lobbyist principal and each lobbyist must file annually with the NC Secretary of State
- Must file within one day after beginning lobbying

North Carolina



Center for Nonprofits

State lobbying registration fees

- Every lobbyist principal and lobbyist must pay an annual fee of **$\$500 (+\$3) = \$503$**
 - Prior fee was $\$250 (+\$3) = \$253$
 - Minimum total fee for a nonprofit = **$(\$503 \times 2) = \$1,006$**
 - Effective date: July 1, 2023 (enacted Oct. 1, 2023)
 - Possible delay until January 1, 2025

North Carolina



Center for Nonprofits

Reminder: who is a lobbyist for a nonprofit?

1. A contractor who engages in any lobbying; OR
2. A nonprofit employee who spends *at least 5% of their time lobbying state officials*



Center for Nonprofits

Many missions | 100 counties | One voice