

OCTOBER 15, 2021

New Law in California Addressing Online Charitable Fundraising Platforms

Last week, Governor Newsom signed **Assembly Bill 488**, making California the first state to enact legislation targeting online “charitable fundraising platforms” and charities that use their services. What are online charitable fundraising platforms? For the everyday person, they are the websites, apps, and other online platforms that offer opportunities to support a charitable cause or organization through donations or other types of activity. Think online birthday fundraisers for charity instead of birthday gifts, online “round up” programs to give a charity the cents on top of your purchase price, and other services that use the Internet to help make philanthropic giving easy and fun.

Online charitable fundraising platforms have become widely popular with the public. However, many of these platforms have existed in a gray area not clearly regulated by state fundraising laws, which generally pre-date the age of Internet fundraising. In response, state charity regulators have wrestled with how to ensure that online consumers and donors are well-informed and protected from fraud, misrepresentation, and misleading practices, and that charities receive the promised donations.

California’s new law attempts to address these concerns. Under existing California law, **commercial fundraisers, fundraising counsel**, and **commercial coventurers** are required in certain circumstances to register with the California Attorney General’s Registry of Charitable Trusts, enter into contracts with charities containing specific terms, and report periodically to the Registry on the fundraising activities they conduct in California, among other requirements.

Beginning January 1, 2023, there will be two new categories of regulated fundraisers:

1. **Charitable Fundraising Platforms** – defined as any person, corporation, unincorporated association or other legal entity that uses the Internet to provide an Internet website, service, or other platform to persons in this state, and performs, permits, or otherwise enables acts of solicitation to occur.
2. **Platform Charities** – defined as a charitable trustee or a charitable corporation that facilitates acts of solicitation on a charitable fundraising platform.

Specific examples of a “**charitable fundraising platform**” include a platform that:

- › Lists or names specific charitable organizations to receive donations or grants of recommended donations made by donors using the platform;
- › Allows a person using the platform to solicit donations for or recommend donations

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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be granted to a charitable organization through peer-to-peer charitable fundraising;

- › Allows platform users to select a charitable organization to receive donations or grants of recommended donations made by the platform, a platform charity, or other person based on purchases or other activity performed by platform users;
- › Lists or names specific charitable organizations to receive donations or grants of recommended donations made by the platform based on purchases or other activity performed by platform users; or
- › Provides a customizable Internet-based website, software-as-a-service, or other platform to charitable organizations allowing them to solicit or receive donations on or through the platform, including via peer-to-peer charitable fundraising.

Specific examples of a “**platform charity**” include a charity that:

- › Solicits donations through a charitable fundraising platform from platform users with the implied or expressed representation that the platform charity may grant donations to other recipient organizations; or
- › Grants funds to other recipient organizations based on purchases or other activity of users on a charitable fundraising platform.

The law also provides exceptions to these definitions to clarify that certain online fundraising activities will not trigger these statuses, such as a charity’s own platform that fundraises only for itself or a sponsoring organization of donor-advised funds (DAFs) with platform services only for DAF advisors.

Once the law takes effect, **charitable fundraising platforms** and **platform charities** must comply with new requirements in California, including but not limited to:

- › **Registration and annual reports with the Registry of Charitable Trusts** disclosing certain information regarding fundraising activity.
- › **Requiring “good standing”** of platform charities and recipient charities, meaning that each charity’s tax-exempt status has not been revoked by the IRS or California Franchise Tax Board and the California Attorney General has not prohibited the charity from soliciting or operating in the state.
- › **Conspicuous disclosures** to donors, including (among other things) any fees deducted from donations, the maximum time for a donation or recommended grant to be delivered to the recipient charity, and identifying the party initially receiving the donations.
- › **Obtaining a charity’s written consent** to be featured or listed on a platform, except in certain circumstances, including complying with a charity’s request to opt-out from any platform.
- › **Holding donated funds in a separate account (or accounts) and ensuring prompt distributions** to recipient charities with an accounting of any processing fees.

The Attorney General will establish rules and regulations to administer the new law, so look for more information as we get closer to January 2023. We may also see other states follow California’s lead.