

## Nonprofit Alert

May 2021

# Proposed California Law Targets Online Charitable Fundraising Platforms

A recently introduced California bill would regulate for the first time online charitable giving platforms operating in the state, including GoFundMe, Fundly, Facebook, Amazon Smile and a host of emerging platforms. [Assembly Bill 488](#), or the Supervision of Trustees and Fundraisers for Charitable Purposes Act, would establish a regulatory framework for “charitable fundraising platforms” and “platform charities” that includes registration and reporting obligations, consumer disclosure and solicitation requirements, and banking and accounting rules, among its other provisions. The proposed bill defines charitable fundraising platforms as “certain legal entities that use the internet to provide a website, service, or other platform to persons in this state, and perform, permit, or otherwise enable certain acts of solicitation to occur.” Introduced on Feb. 8 by California Assemblywoman Jacqui Irwin, AB 488 is her latest legislative effort to regulate online charity platforms that have proliferated in recent years.

### Key takeaways:

- The regulatory framework would cover both “charitable fundraising platforms” (entities that operate technology platforms that enable charitable giving) and “platform charities” (nonprofit intermediaries set up to solicit and receive donations raised through fundraising platforms).
- Charitable fundraising platforms and platform charities would be required to register with and provide regular reporting to the California Attorney General’s Registry of Charitable Trusts.
- Covered platforms and platform charities would be required to post conspicuous disclosures to prevent consumer confusion, misunderstanding or deception. They would also have to meet specific requirements



to use the names of charitable organizations in online solicitations or secure written consent to do so.

- Charitable donations would have to be held in a separate bank account and sent promptly to the recipient charities. Platforms and platform charities would be required to provide a detailed accounting of processing fees imposed for the funds.

### A Growing Segment

Charities are a significant economic presence in California, with approximately 115,000 charitable organizations registered with the Attorney General’s Registry of Charitable Trusts. AB 488 targets a growing segment of charitable entities: charitable fundraising platforms and platform charities, which are currently regulated through guidelines issued by the state Attorney General’s Office.

The proposed act clarifies and expands the Attorney General’s authority to regulate charitable corporations, unincorporated associations, trustees, commercial fundraisers, fundraising counsel, commercial co-venturers and other legal entities holding or soliciting property for

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charitable purposes over which the state or Attorney General has enforcement and supervisory authority.

Some charitable fundraising platforms exist to raise money for unaffiliated, individual causes, such as GoFundMe and CrowdRise. Other platforms have evolved out of companies with a business purpose independent of charitable giving, such as Amazon, eBay, Facebook, Lyft and Overstock. Many platforms charge a fee based on a percentage of the amount given to facilitate the donation.

A platform charity is defined by AB 488 as “a trustee or charitable corporation” that “facilitates described acts of solicitation on a charitable fundraising platform.” Platform charities include organizations such as PayPal Giving Fund, which uses PayPal technology and financial support to raise money for causes, and Network for Good, a software company founded by America Online, Cisco Systems and Yahoo that offers fundraising software and coaching for charities and nonprofit organizations. (Read our alert on PayPal Giving’s settlement with 23 state attorneys general [here](#).)

## Current Guidance

California’s Business and Professions Code includes charitable solicitation provisions that regulate solicitations for charitable purposes to prevent fraud, but the Code does not specifically address charitable fundraising platforms or platform charities.

Charitable fundraising platforms must register with the Attorney General’s Registry of Charitable Trusts in certain circumstances, including if the platforms are paid to solicit donations for charitable purposes, to receive or control funds as a result of charitable solicitations, or to provide advice or prepare materials for charitable solicitations.

In July 2019, Attorney General Xavier Becerra issued guidelines for Californians who donate to charities through online charitable fundraising platforms, called the “Attorney General’s Guide for Online Charitable Giving.” Before submitting a donation using a charitable fundraising platform, donors are encouraged to determine the intended recipient of a donation, how much of the donation the charity will receive, how long it will take the charity to receive the donation and what fees are deducted from the donation.

The guide also urges charitable fundraising platforms to avoid fraud and deception in fundraising campaigns, abide by their fiduciary duties under state law, allow donors to choose how their information is shared, make the donation process transparent, distribute donated funds as quickly as possible, and provide compliant tax donation receipts.

## Bill Provisions

If enacted, AB 488 would explicitly bring charitable fundraising platforms and platform charities under the authority of the California attorney general as of Jan. 1, 2023. The bill would put in place provisions including the following:

**Registration.** Charitable fundraising platforms and platform charities would be required to register with the Attorney General’s Registry of Charitable Trusts annually. Also, the Attorney General would be required to impose registration and renewal fees.

**Annual reports.** Charitable fundraising platforms and platform charities would be required to file annual reports on forms provided by the Attorney General’s Office.

**Good standing status.** Charitable fundraising platforms and platform charities would be limited to working with charitable organizations in good standing, defined as organizations whose tax-exempt status has not been revoked by the Internal Revenue Service or the Franchise Tax Board, and that are not prohibited from soliciting or operating in the state by the Attorney General.

**Disclosures.** Charitable fundraising platforms and platform charities would be required to provide prospective donors with prescribed, conspicuous disclosures that prevent a likelihood of deception, confusion or misunderstanding.

**Donation receipts.** The prompt provision of tax donation receipts to donors would be required.

**Written consent.** Prior written consent to use a recipient charitable organization’s name in a solicitation would need to be obtained by the charitable fundraising platforms and platform charities. However, written consent would not be required for certain acts of solicitation if specific requirements are met.

**Solicitations.** The charitable fundraising platform or platform charity would be required to remove any recipient charitable organization from its solicitation list upon verified written request by the charitable organization. Also, making consent to solicitations a condition for accepting a donation or grant of a recommended donation would be prohibited.

**Separate accounts.** Charitable fundraising platforms and platform charities would be required to hold donations in a separate account and to ensure donations and grants of recommended donations are sent promptly to recipient charitable organizations with an accounting of any fees imposed for processing the funds.

**Penalties.** Failure to register with the state, renew registration or file annual reports would result in monetary penalties. Late fees would also be imposed for failure to timely register, renew registration and file reports.

**Enforcement actions.** The Attorney General would be entitled to recover from defendants named in a charitable trust enforcement action all reasonable attorney's fees and actual costs incurred in conducting that action.

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