

## Nonprofit Alert

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# California Enacts AB 488 To Regulate Online Charitable Fundraising Platforms

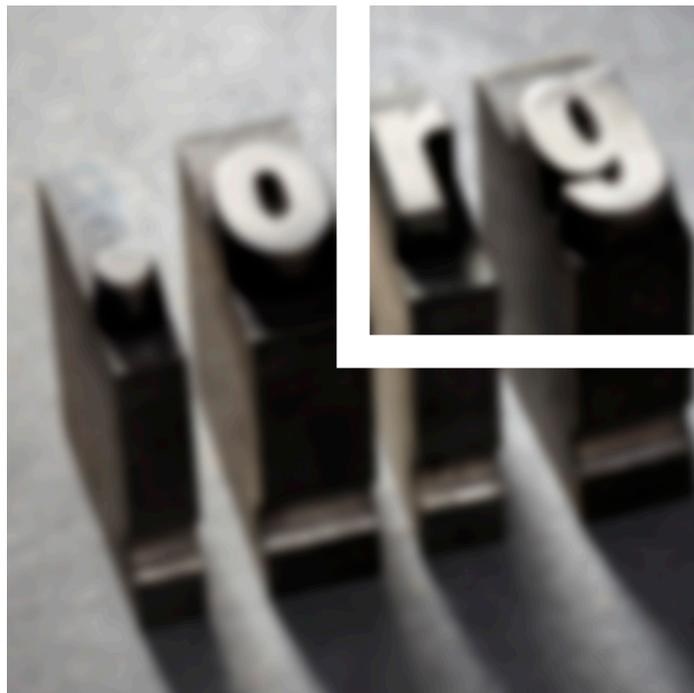
California Gov. Gavin Newsom signed into law [Assembly Bill 488](#), which regulates for the first time online charitable giving platforms operating in the state and the charities that are hosted on these platforms. The law is indicative of a growing body of state regulators who are focused on online charitable giving that does not fall under traditional definitions of charitable fundraising.

The new legislation, known as the Supervision of Trustees and Fundraisers for Charitable Purposes Act was enacted on Oct. 7 and expands the state's regulatory supervision of charitable fundraisers. California already had a regulatory regime that included rules for charities, trustees, commercial fundraisers, fundraising counsel and commercial co-venturers, but this new law now also includes rules governing "charitable fundraising platforms," "platform charities" and "recipient charitable organizations." The regulatory framework requires that these online fundraising platforms and the charities they host on their sites be subject to registration and reporting obligations, meaningful and transparent consumer disclosures, and banking and accounting rules. Affected organizations have over a year to prepare for implementation of the new rules, as the operative provisions of the act take effect on Jan. 1, 2023.

The law as enacted remains largely unchanged from the original bill, which was introduced on Feb. 8 by California Assemblywoman Jacqui Irwin (read our previous alert on AB 488 [here](#)).

## Adding Online Charitable Giving Platforms to the Regulatory Framework

The act adds both online charitable giving platforms and their recipient charities to the list of cause marketing programs that are regulated by California law. As a refresher, the definitions of these new regulated entities are as follows.



**"Charitable fundraising platform"** means legal entities (persons, corporations, unincorporated associations and other legal entities) that use the internet to provide a website, service or other platform to persons in California and perform, permit or otherwise enable certain acts of solicitation to occur. This includes platforms that provide donations to charities listed on their website either based on recommendations from the person using the platform or as a result of purchases or other activities performed on the platform.

Importantly, a **charitable fundraising platform** does not include the following:

- A charitable organization's own platform that solicits donations only for itself.
- A vendor that solely provides technical or supportive services to a charitable fundraising platform so that the charitable fundraising platform can function and operate, including vendors used for hosting or domain services, security certificates, internet access, internet application development, or digital payment processing.
- A sponsoring organization of donor-advised funds.

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A “**platform charity**” includes a trustee or charitable corporation that facilitates the above-described acts of solicitation on a charitable fundraising platform. In other words, the charitable fundraising platform may be hosted by a charity itself, which would also be subject to regulation. A for-profit charitable fundraising platform presumably falls under the first definition. This includes charities that do the following:

- Solicit donations through a charitable fundraising platform for themselves from donors who use the charitable fundraising platform with the implied or express representation that the platform charity may grant donations to recipient charitable organizations.
- Grant funds to recipient charitable organizations based on purchases made or other activity performed by persons who use a charitable fundraising platform.

A “**recipient charitable organization**” includes a trustee or a charitable corporation that is listed or referenced by name on a charitable fundraising platform or by a platform charity for solicitation purposes.

### Required Registration and Disclosure for New Online Platforms

These new types of third-party charitable fundraisers and their recipient charities will be required to register with and provide regular reporting to the California Attorney General’s Registry of Charitable Trusts.

Charitable fundraising platforms and platform charities must also meet specific requirements in order to use the names of charitable organizations in online solicitations, or must secure written consent to do so. Covered online platforms must independently verify the “good standing” of recipient charitable organizations prior to soliciting charitable contributions for them, receiving or controlling funds for them, or distributing funds for or to them. Charitable donations also must be held in a separate bank account and sent promptly to the recipient charities. Platforms and platform charities will be required to provide a detailed accounting of processing fees imposed for the funds.

Importantly, charitable fundraising platforms and platform charities will be required to post conspicuous disclosures to prevent consumer confusion, misunderstanding and deception. The disclosures must be provided before a

person can complete a donation or select or change a recipient charitable organization on a charitable fundraising platform, and must include at least the following information:

- A statement that donations are made to the charitable fundraising platform, the platform charity, the recipient charitable organization or the person engaging in peer-to-peer charitable fundraising, whichever is applicable.
- A statement that a recipient charitable organization may not receive donations or grants or recommended donations, with an explanation identifying the most pertinent reasons under which a recipient charitable organization may not receive the funds.
- The maximum length of time it takes to send the donation or a grant of the recommended donation to a recipient charitable organization, with an explanation as to the length of time, unless the donation is sent contemporaneously to a recipient charitable organization after the donation is made.
- The fees or other amounts, if any, deducted from or added to the donation or a grant of the recommended donation that are charged or retained by the charitable fundraising platform, the platform charity or any other partnering vendor, other than digital payment processing fees.
- A statement as to the tax deductibility of the donation.

### Amendments Introduced Since the Original Act

Followers of AB 488’s progress will see that the act includes several amendments to the original bill. Of particular note is the addition of new definitions and rules to help classify an entity as a charitable fundraising platform, commercial fundraiser or commercial co-venturer (CCV), especially when an organization might meet several definitions at once.

According to the amendments, a person or entity that meets the definition of both a commercial fundraiser for charitable purposes and a charitable fundraising platform will be considered only a commercial fundraiser for charitable purposes if the person or entity is compensated for acts of solicitation, including the following:

- Direct mail solicitation, excluding email or messages.
- Estate gift or estate planning solicitation.

- In-person solicitation through a fundraising event, door-to-door or in other public spaces, or through a vending machine or other similar equipment that does not require a person to conduct the solicitation.
- Noncash solicitation.
- “Nonincidental acts of solicitation” that are not internet-based, including solicitation through print, radio or television.
- Solicitation involving the receipt of something of value, or the chance to win something of value, in return for a donation.
- Telephone solicitation.

Further, a person or entity that meets the definition of both a CCV and a charitable fundraising platform will only be considered a CCV if the solicitation is conducted through a website, service or other platform; the solicitation is directed at individuals in the state; the funds benefit six or fewer recipient charitable organizations per calendar year; and the CCV complies with the act’s registration requirements.

### Notable Change for Some Commercial Co-Venturers as Well

The act’s registration requirements mark a notable departure from previous rules for some CCV arrangements. In the past, a CCV that was advertised to consumers in California did not need to register with the state as long as the CCV had a written contract with the benefiting charity or charities, delivered the promised funds to the charity or charities on a rolling 90-day basis, and provided an accounting with each payment to confirm the accurate calculation of the amount. Under this new law, if a CCV is operating entirely online to solicit contributions and is raising funds for six or more charities in the promotion, the CCV will be required to register the arrangement with the state of California.

Despite this change, the number of CCVs required to register may still be limited, as CCVs conducting programs in a physical location without an online presence, and those that benefit six or fewer recipient charities, remain governed by existing CCV laws and are not subject to the registration requirement as long as the preconditions listed above are met. CCVs with both

physical and online operations should follow the act’s registration requirements for online-only CCVs.

### Open Items and What Comes Next

The act is intended to target online charitable platforms that previously either escaped regulation in California or did not easily identify as one type of charitable fundraiser or another. Charities and fundraising platforms will have a bit more than a year to consider how these legislative changes will impact them, during which time the California Attorney General has the authority to implement rules and regulations regarding administration of the act.

Before the provisions of this act become operative, we would expect to see some interim guidance from California on important questions—for example, whether there is a threshold number or amount of solicitations raised that requires a charitable platform and its recipient charities to register. The act is currently silent on this matter. It is also unclear whether using an intermediary recipient charity (i.e., such that the platform lists a number of charities, but initially the funds are provided to an intermediary that decides on recommendations and distributes the funds) would make the intermediary subject to the rules in all cases.

If your charity is listed on an online charitable platform or you operate an online platform that raises funds for charities, and you have questions about the administration of the act or need help determining how it will impact your operations, please contact us.

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