

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 488 (Irwin)
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Hearing Date: June 29, 2021
Fiscal: Yes
Urgency: No
JT

SUBJECT

Charitable organizations: charitable fundraising platforms and platform charities

DIGEST

This bill establishes a comprehensive regulatory framework for online charitable fundraising that becomes operative January 1, 2023.

EXECUTIVE SUMMARY

The regulatory framework of the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Act) generally contemplates traditional solicitation methods by charitable organizations. However, online charitable fundraising by internet platforms, many of which are not regulated by the Act, has increased and become a popular method of fundraising over the past several years. With the onset of COVID-19 and the inability of many charities to host traditional fundraising events, this form of charitable giving has become even more widely used.

This bill seeks to regulate two relatively new types of charitable fundraising: charitable fundraising platforms and platform charities. The bill would, beginning in 2023, create a comprehensive framework governing charitable fundraising platforms and platform charities. These entities must, among other things, register with the Attorney General, file annual reports, work with only those charities that are in good standing, make certain disclosures, obtain the consent of the charity except in limited circumstances, and appropriately manage donated funds. The Attorney General must establish rules and regulations for administration of the bill's provisions.

The bill is substantially similar to AB 2208 (Irwin, 2020), which passed this Committee by a vote of 7-1. The bill is sponsored by Attorney General Rob Bonta and is supported by the California Association of Nonprofits, the League of California Community Foundations, and PayPal, Inc. The bill is opposed by Classy, Inc.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that the Attorney General is the chief law officer of the state with broad duties to see that the laws of the State are uniformly and adequately enforced. (Cal. Const., art. V, § 13; Gov. Code § 12510.)
- 2) Establishes the Supervision of Trustees and Fundraisers for Charitable Purposes Act under the supervision of the Attorney General (Gov. Code §§ 12580-12599.8), which provides for regulation of charitable corporations, unincorporated associations, trustees, and other legal entities holding property for charitable purposes, commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, and commercial covertures. (Gov. Code §§ 12581.)
- 3) Requires the Attorney General to maintain a registry of charitable corporations, unincorporated associations, and trustees subject to the Act and of the particular trust or other relationship under which they hold property for charitable purposes. (Gov. Code §§ 12584.)
- 4) Requires, generally, every charitable corporation, unincorporated association, and trustee subject to the Act to file with the Attorney General periodic written reports, under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the corporation, unincorporated association, or trustee, in accordance with rules and regulations of the Attorney General. Requires the Attorney General to make rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing the reports. (Gov. Code § 12586(a), (b).)
- 5) Establishes registration fees and late fees for entities subject to the Act. (§ 12586.1.)
- 6) Provides that the Attorney General may make additional rules and regulations necessary to implement the Act. (§ 12587.)
- 7) Vests the primary responsibility for supervising charitable trusts in California, for ensuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations, in the Attorney General, and provides that the Attorney General has broad powers under common law and California statutory law to carry out these charitable trust enforcement responsibilities. (Gov. Code § 12598(a).) Provides that the Attorney General may refuse to register or may revoke or suspend the registration of a charitable corporation or trustee, commercial fundraising counsel, or coventurer, whenever the Attorney General finds that the entity has violated the Act. (*Id.* at (e)(1).)

8) Defines:

- a) "Commercial fundraiser for charitable purposes" as any individual, corporation, unincorporated association, or other legal entity who for compensation is involved in charitable solicitation of funds, assets, or property, or the management thereof, as specified. (§12599(a).)
 - b) "Fundraising counsel for charitable purposes" as a person who plans, manages, advises, counsels, consults, or prepares material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes, without directly making solicitations or managing solicited funds, assets, or property, as specified. (§ 12599.1(a).)
 - c) "Commercial coventurer" as any person who, for profit, is regularly and primarily engaged in trade or commerce other than in connection with the raising of funds assets, or property for charitable organizations or charitable purposes, and who represents to the public that the purchase or use of any goods, services, entertainment, or any other thing of value will benefit a charitable organization or will be used for a charitable purpose. (§ 12599.2(a).)
- 9) Prohibits certain acts and practices in the planning, conduct, or execution of any solicitation or charitable sales promotion including:
- a) misrepresenting or misleading anyone in any manner to believe that any other person sponsors, endorses, or approves a charitable solicitation or charitable sales promotion when that person has not given consent in writing to the use of the person's name for these purposes; and
 - b) representing that any part of the contributions solicited by a charitable organization will be given or donated to any other charitable organization unless that organization has consented in writing to the use of its name prior to the solicitation. The written consent shall be signed by one authorized officer, director, or trustee of the charitable organization. (Gov. C. § 12599.6(f)(5)&(11).)

This bill:

1) Defines:

- a) "Charitable fundraising platform" 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, as specified. Excepts from the definition: 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; and a sponsoring organization of donor-advised funds. For entities that fit the definition of charitable fundraising platform and the definition of commercial fundraiser, fundraising counsel, or commercial

coventurer, sets forth conditions in which the entity will only fall under one of the applicable definitions.

- b) "Good standing" to mean that a platform charity, recipient charitable organization, or other charitable organization's tax-exempt status has not been revoked by the Internal Revenue Service, or the Franchise Tax Board, or is not prohibited from soliciting or operating in the state by the Attorney General.
 - c) "Peer-to-peer charitable fundraising" as a solicitation campaign created by a person to support a recipient charitable organization, through or with other assistance provided by a charitable fundraising platform or platform charity.
 - d) "Platform charity" as a trustee or a charitable corporation that facilitates acts of solicitation on a charitable fundraising platform, including by (1) soliciting donations through a charitable fundraising platform for itself 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, or (2) granting funds to recipient charitable organizations based on purchases made or other activity performed by persons who use a charitable fundraising platform. Provides an exception for a sponsoring organization of donor-advised funds under specified conditions.
 - e) "Recipient charitable organization" as a trustee or charitable corporation that is listed or referenced by name on a charitable fundraising platform or by a platform charity for solicitation purposes.
- 2) Provides that charitable fundraising platforms and platform charities are trustees for charitable purposes subject to the Attorney General's supervision. Generally incorporates charitable fundraising platforms and platform charities into the Act. Requires these entities to:
- a) Register with the Attorney General's Registry of Charitable Trusts, as specified.
 - b) File annual reports with specified information other than personally identifiable information of donors or other persons.
 - c) Work only with charitable organizations that are in good standing, which may be determined based on electronic lists periodically published by the Internal Revenue Service, Franchise Tax Board, and the Attorney General's Registry of Charitable Trusts, as specified. A platform charity must itself have good standing in order to facilitate acts of solicitation on a charitable fundraising platform.
 - d) Requires the charitable fundraising platform or platform charity, when performing or facilitating specified acts of solicitation, to provide conspicuous disclosures, before the person can complete the donation or select or change a recipient charitable organization, that prevent a likelihood of deception, confusion, or misunderstanding, including:

- i. 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.
 - ii. 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. This disclosure is not required when there are no circumstances under which a recipient charitable organization may not receive the funds. The explanation may be provided through a conspicuous hyperlink, so long as the disclosure is conspicuous when the hyperlink is selected.
 - iii. 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 explanation as to the maximum length of time may be provided through a conspicuous hyperlink, so long as the disclosure is conspicuous when the hyperlink is selected.
 - iv. 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, platform charity, or any other partnering vendor, other than digital payment processing fees. This disclosure is not required for certain acts of solicitation when no fees or amounts are deducted or added.
 - v. A statement as to the tax deductibility of the donation, except as specified.
- e) Obtain written consent from a charitable organization before using its name in a solicitation, as specified. Allows for exceptions if all of the following are met:
- i. The charitable fundraising platform or platform charity may only reference the recipient charitable organization's name, address, telephone number, internet website, including through a hyperlink, employer identification number, corporation or organization number, or registration number with the Attorney General's Registry of Charitable Trusts, classification in the National Taxonomy of Exempt Entities system, publically available information from the recipient charitable organization's tax or information returns filed with the Internal Revenue Service, publically available information from the recipient charitable organization's reports filed with the Attorney General's Registry of

Charitable Trusts, or other information set forth in rules or regulations, as provided.

- ii. The charitable fundraising platform or platform charity must conspicuously disclose before persons can complete a donation, or select or change a recipient charitable organization, that the recipient charitable organization has not provided consent or permission for the solicitation, and has not reviewed or approved the content generated by persons engaging in peer-to-peer charitable fundraising, when applicable.
 - iii. The charitable fundraising platform or platform charity must remove any recipient charitable organization from its list or any solicitation regarding the recipient charitable organization upon written request by the recipient charitable organization, and verification that the request is legitimate. Requests must be promptly verified and it must take no longer than three business days for removal to occur after verification is completed.
 - iv. The charitable fundraising platform or platform charity may not require that a recipient charitable organization consent to any solicitations as a condition for accepting a donation or grant of a recommended donation.
- f) Promptly provide a tax donation receipt to donors.
 - g) Hold donations in separate accounts from other funds and promptly ensure they are sent to recipient charitable organizations, and not misuse the donations.
 - h) Make certain contracts with third-party vendors available for inspection by the Attorney General.
- 3) Requires the Attorney General to establish rules and regulations for administration of the provisions described above, which must include:
- a) Updates to the definitions of a charitable fundraising platform or platform charity, as needed, to address changes in technology.
 - b) The content of the form and other information to be provide by a charitable fundraising platform for registration and in annual reports, as specified, including the handling of confidential, trade secret, or personal information provided.
 - c) Requirements for any written agreement between a recipient charitable organization and a charitable fundraising platform or a platform charity that provides consent for or otherwise applies to solicitations for donations, including permitting those agreements to be entered into electronically.
 - d) The requirements for holding donations or distributing donations and grants of recommended donations, as specified, including the maximum length of times it take to send the donated funds, the circumstances under which donors or persons may be contact to provide alternate recipient

charitable organizations or notified when the donated funds are sent, and the circumstances when donor or personal information may be provided to recipient charitable organizations.

4) Becomes operative January 1, 2023.

COMMENTS

1. Author's statement

The author writes:

AB 488 provides a necessary update to California's charitable fundraising laws to ensure donors, non-profits, and online charitable fundraising platforms can continue their philanthropic work in our state. Californians embrace technology in many aspects of their lives, and over the past few years technology has dramatically changed the ways in which donors can provide critical funds to the non-profit sector. By creating new definitions, requirements, and transparency measures that fit with new online methods of giving, Californians can donate with renewed confidence that their support of these important causes are having an impact.

2. Attorney General oversight of charities

"Historians tell us that the spring floods of Oregon's mighty Columbia River have wrought many changes in the lives of men. It could hardly be expected, however, that the rampaging river's destruction of a partially completed race track near Portland would launch California upon its program of actively overseeing its charitable organizations. Such was indeed the case. It was from the Portland newspapers that then Attorney General Brown first learned of the existence of a charitable trust which operated the jockey club at a San Francisco Bay Area race track. Coupled with this intelligence was the unwelcome news that the funds of this charitable trust had been invested in an ill-fated and speculative venture into horse-racing on the banks of the Columbia River. Many thousands of dollars rightfully belonging to California beneficiaries of that trust rode the waves of the flood-swollen Columbia far out to sea."¹

This infelicitous event led to the eventual adoption of the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Gov. Code 12580 et seq.; Stats. 1959, Ch. 1258), which provides for the regulation of charitable corporations, unincorporated associations, trustees, and other legal entities holding property for charitable purposes, commercial fundraisers for charitable purposes, fundraising counsel for charitable

¹ Wallace Howland, *The History of the Supervision of Charitable Trusts and Corporations in California* (1966) 13 UCLA L. Rev. 1029, 1029-1030.

purposes, and commercial covertures. (Gov. Code §§ 12581.) As the California Supreme Court has noted: “Beneficiaries of a charitable trust, unlike beneficiaries of a private trust, are ordinarily indefinite and therefore unable to enforce the trust in their own behalf. Since there is usually no one willing to assume the burdens of a legal action, or who could properly represent the interests of the trust or the public, the Attorney General has been empowered to oversee charities as the representative of the public, a practice having its origin in the early common law.” (*Holt v. College of Osteopathic Physicians & Surgeons* (1964) 61 Cal.2d 750, 754 [citations omitted].) As a general matter, charities operating in California must register with the Attorney General and file annual financial reports listing revenues and expenditures. (Gov. Code §§ 12584, 12586.) These reports are used by the Attorney General to investigate and litigate cases of charity fraud and mismanagement by trustees and directors of charities.

In 1989, in order to protect the interests of a donor and the donee charitable organization, the Act was expanded to also apply to commercial fundraisers who solicit for charitable purposes (a commercial fundraiser is not a charity, but usually an individual or corporation engaged in business for-profit). (SB 502 (Lockyer, Ch. 307, Stats. 1989).) The provisions for commercial fundraisers were further strengthened in 1991 and 1992 by adding additional disclosure requirements. (See AB 838 (Peace, Ch. 569, Stats. 1991); SB 1682 (Boatwright, Ch. 511, Stats. 1992); AB 3066 (Sher, Ch. 249, Stats. 1992).) Then in 1998, AB 1810 (Davis, Ch. 445, Stats. 1998) was enacted in response to an increasing practice by sophisticated commercial fundraisers to hire “fundraising counsels” or enter into partnerships with “commercial conventurers,” in order to downplay the extraordinary costs of their fundraising and exclude administrative costs from their annual financial reports (because the commercial fundraisers were aware that high fundraising costs and administrative expenses – which translate into smaller distributions to the charity – can discourage donors from making donations). Accordingly, AB 1810 sought to close any loophole in the law by requiring registration and reporting of fundraising counsels and commercial conventurers.

The Act is again need of updating, this time to capture the rapidly-expanding industry of online charitable giving. The bill is sponsored by Attorney General Rob Bonta, whose office writes:

In recent years, the advent of charitable fundraising on Internet platforms has fundamentally altered the landscape of charitable giving beyond what current law contemplated and can regulate. Internet companies have developed new methods for individuals to donate to charities through websites and phone applications that serve as “charitable fundraising platforms” in ways that current solicitation laws, adopted before the Internet age, do not specifically reach. As these platforms grow and evolve, they are increasingly supplanting traditional channels for charitable solicitations, such as telephone and direct mail, and employing

never before seen fundraising practices, some of which may be misleading or pose a fraud risk to the public.

Although increased charitable giving through Internet platforms can be beneficial to the public, the AGO has identified several ways in which these new methods of giving have deceived and mistreated the public. For example, in some cases, these platform entities solicit and take donors' contributions leaving the donors with the false belief that their donations went directly to or were eventually granted to the charities of their choice. A recent example involves NY Charities, a platform that encouraged donations to thousands of local New York charities listed on the platform, but then shut down without giving the donated funds to any donor-selected charities. In other instances, donations were made to a platform's affiliated or partnering charity, then that charity kept the donations or granted them to charities donors did not select. Other donors mistakenly believed their donations would be delivered promptly or within a reasonable time, that their contact information would be shared with recipient charities, or that charities listed on the platform gave the platform and its users permission to solicit on their behalf. Some platforms list and grant donations to charities that are prohibited from operating and soliciting in California for violations of the Act, and they encourage their users to give to or solicit for such charities.

Existing law has been ineffective at curtailing these problems because the Act is simply outdated. In order to ensure the AGO's ability to protect the public, the AGO needs to be in position to oversee these fundraising practices and to respond nimbly to new concerns wherever they arise. However, we cannot effectively do so unless there is a framework that specifically defines these new platform entities and requires them to register with the Attorney General's Registry of Charitable Trusts.

This bill seeks to regulate two relatively new types of charitable fundraising: charitable fundraising platforms and platform charities. The bill would create a comprehensive framework by which charitable fundraising platforms and platform charities must comply, and give oversight and regulatory authority to the Attorney General. The bill is substantially similar to AB 2208 (Irwin, 2020), which passed this Committee by a vote of 7-1. It was placed on the suspense file in the Senate Appropriations Committee.

3. Regulatory framework for online charitable giving

The bill seeks to address the current lack of oversight over internet websites, services and, platforms that perform, permit, or otherwise enable acts of charitable solicitation to occur in this State. The bill accomplishes this by creating a regulatory framework under the Act that requires charitable fundraising platforms and platform charities to register

with the AG before soliciting charitable donations and submit reports about their activities. Further, the bill defines the types of actions that make an entity a charitable fundraising platform or platform charity and enacts several consumer protections, such as specific disclosure requirements to donors, only allowing charitable fundraising platforms and platform charities to solicit for charities in good standing, and that funds solicited on behalf of a charitable organization must be kept separate from funds of the charitable fundraising platform or platform charity. "Good standing," under this bill, means that a platform charity, recipient charitable organization, or other charitable organization's tax-exempt status has not been revoked by the Internal Revenue Service, or the Franchise Tax Board, or has not prohibited from soliciting or operating in the state by the AG.

Generally, a charitable fundraising platform is the consumer facing internet website or platform that is soliciting donations for charitable organizations. This can be done through several methods: providing donors a database or list of one or more charitable organizations to receive donations; crowdfunding or peer-to-peer campaigns where a person is encouraged to use their social network or other connections to solicit donations; or supporting charities through purchases, whether by adding a donation at the end of a purchase or having a donation made by an entity itself based on how much a person purchases on the entity's platform or website. Examples of entities that may fall under the category of charitable fundraising platforms include Amazon, Benevity, Charity Navigator, CrowdRise, eBay, Facebook, GoFundMe, Google, GuideStar (Candid), Lyft, Overstock, and PayPal.

Some of these companies are not charities themselves and therefore partner with fundraising platforms whose purpose is to facilitate online charitable giving. For example, a donation made through a charitable fundraising platform may actually be made to a partner platform charity that is a registered 501(c)(3) organization and not directly to the charity chosen. The platform charity then facilitates getting the donation to the chosen charity; however, it can take several weeks to months for the actual donation to be paid out to the charity chosen by the donor. Some charitable fundraising platforms do partner with charities and collect donations on their behalf and do not use a partner platform charity, while others have a hybrid model where they collect for some charities directly and use partner platform charities for other donations. The bill additionally requires a platform charity to have good standing in order to facilitate acts of solicitation.

The bill also allows a charitable fundraising platform or platform charity to solicit donations on behalf of a charitable organization without their prior written consent if certain conditions are met. These conditions include that only certain information for the charitable organization is listed, that a conspicuous disclosure is placed before donations can be completed that states the charitable organization has not provided consent or permission for the solicitation, and that no fees can be deducted from the donation or grant other than digital processing fees. However, fees added to the

donation or grant are allowed. Some charitable fundraising platforms create a database of charities from electronic lists periodically published by the Internal Revenue Service or other governmental entities and do not seek written consent from every charity on the list prior to uploading a charity to their databases. The bill provides a mechanism for a charitable organization to contact the charitable fundraising platform or platform charity to remove their organization from the platform and requires verification that the request is legitimate and for the name of the charitable organization to be removed within three business days of verification.

Due to the complicated and varied nature of how these online donations are being solicited and made, it is important for there to be appropriate oversight mechanisms to ensure consumers are aware of how their donations are being handled and that the funds being collected for charities are actually being received by them.

4. For virtually all stakeholders, most major concerns appear to have been addressed

This bill is the product of a multi-year, intensive stakeholder process. In contrast to its predecessor, the bill has drawn fewer concerns and appears to have largely addressed issues that bedeviled prior efforts. For instance, recent amendments set forth conditions to avoid subjecting an entity to registration as both a charitable fundraising platform and a commercial fundraiser, fundraising counsel, or commercial coventurer. These amendments were developed in response to concerns that have been raised by several entities, including Omaze, a commercial fundraiser registered with the Attorney General under the Act that is an online fundraising platform. And all of the organizations that registered opposition last year – Charity Navigator, the Internet Association, Network for Good, and TechNet – have moved to a neutral position.

This is not to say these groups are completely satisfied with the bill. The Internet Association and TechNet for instance, while expressing “deep appreciation” for the work the author has done over the past number of years, continue to express concern regarding the Attorney General’s power under the bill to adopt regulations. In particular, the bill states: “The Attorney General shall establish rules and regulations necessary for the administration of Section 12599.9, which shall include, *but are not limited to*, all of the following.” (Emphasis added.) They argue this italicized phrase confers “unfettered regulatory authority to the Attorney General through the promulgation of regulations at their discretion.” But that phrase does not override the requirement that the rules and regulations be necessary for the administration of Section 12599.9, which sets forth the bill’s substantive regulatory requirements in painstaking detail.

Candid, which supports the bill if amended, maintains databases of nonprofits and on “global grantmaking and its information [which] aids nonprofits in increasing organizational capacity, building trust with donors, and raising the funds to fulfill their missions.” Candid argues for a “safe harbor for entities that allow an opt-in donation

link on behalf of consenting charities.” The author responds that “adopting a safe harbor, or exemption, for entities who have the recipient charities consent would: (i) abandon the transparency and disclosure provisions the bill has for donors for the vast majority of online solicitations, (ii) would remove protections and blind the DOJ and recipient charities from understanding the amount and speed at which these entities process online donations, (iii) and would set these entities at a competitive advantage against their traditional counterparts doing in-person, postal, or telephone solicitation that also all require consent of the charity- but still include registration and reporting.”

The lone organization to register timely opposition is Classy, which argues that concerns animating this bill arise from the conduct of “donor advised funds and other passive platforms (i) that typically have no direct relationship with the charitable organizations to which they funnel donations, and (ii) whose solicitations of donations may occur without the charitable organizations’ consent.” Classy distinguishes their business model: “Platforms like ours are direct service providers to charitable organizations and enable charitable organizations to conduct fundraising on their own behalf. We refer to such direct service providers as ‘Affiliated Service Provider Platforms,’ and such platforms are fundamentally different from Unaffiliated Pass-through Platforms.” With respect to the bill, they argue:

- The obligation to represent the tax status of particular transactions as required by Section 12599.9(e)(5) is redundant and unnecessary, as the charitable organization itself already has this obligation. Further, placing such a responsibility on Affiliated Service Provider Platforms will inadvertently hurt charitable organizations as further described below.
- Mandatory fee disclosures required under Section 12599.9(e)(4) for Affiliated Service Provider Platforms are unnecessary and will inadvertently hurt charitable organizations.
- Section 12599.9(a) of the bill defines “Charitable fundraising platform” in a sweeping manner that implicates business models that are not relevant to the underlying intent of the bill.

The author responds:

In Classy’s support if amended letter, they invent multiple terms not used in the bill in an attempt to differentiate themselves on grounds where the author and the DOJ have yet to find a public policy reason for disparate regulation. Classy puts excessive weight behind the fact they only work with consenting charities, something existing law already requires and is a baseline for CFPs in this bill. While the bill does provide a stringently regulated exception to consent, it is misdirected to believe the purpose behind the bill’s registration, reporting, and disclosures to donors is borne out of listing non-consenting charities, rather than the fundamental act of soliciting for charitable funds online which is actually what triggers inclusion in the bill. Classy and other solicitation service providers like

them are an important actor to include within AB 488 specifically because they provide the template platform that can enable appropriate disclosures to be made by those using their service to solicit for recipient charitable donations, just as other more traditional CFPs like GoFundMe provide their users. They also provide a critical validation point to ensure only charities in good-standing are able to leverage their platform service to reach donors. And to Classy's own point that they do not do certain activities that require disclosures or reporting under AB 488 (e.g. hold funds, deny funds to recipient charities), the bill by its own terms conditions most of its requirements on their applicability, meaning Classy and other solicitation service providers who provide only narrow services will only have a commensurately narrow list of requirements to abide by.

5. Support

The bill is sponsored by Attorney General Rob Bonta, whose office writes:

AB 488 would enable the Attorney General to exercise proper supervision over Internet platform operators. First, the bill ensures a level playing field for all platforms, regardless of business model, by defining two new groups of entities, "charitable fundraising platforms" and "platform charities" that are subject to the Act. This bill would also require platform entities to provide meaningful and conspicuous disclosures on the platforms, promptly distribute donations made through platforms, and prohibit solicitations for charities not in good standing with the Attorney General's Registry. Third, AB 488 would permit some instances of soliciting for a charity without prior consent if certain criteria that safeguard against harm to charities and the public are met. Finally, the bill would authorize the AGO to promulgate regulations to require donor notification and reporting requirements, and to encourage transparency and accountability.

Attorney General Bonta is proud to sponsor AB 488, and reaffirms his commitment to promote transparency, guard the public from fraud or misrepresentation, and ensure a level playing field.

The California Association of Nonprofits writes: "AB 488 is closely aligned with CalNonprofits' online fundraising principles and will provide much-needed oversight of online fundraising platforms. Our previous concerns with the bill have been addressed through conversations with the bill author, regulators in the AG's Charitable Trust Division, and other stakeholders."

The League of California Community Foundations writes that "AB 488 will protect nonprofits and strengthen donor trust in online fundraising platforms. We urge your

support of this needed legislation.”

PayPal writes:

During these unprecedented times, the work and vital services provided by non-profits and charities are needed by the public more than ever. Innovative policies and timely resources will ensure that these necessary relief efforts continue through the challenging times ahead. Responding charities and non-profits are in urgent need of the funding we, and other platforms like ours, can provide. We believe AB 488 provides a path forward to offer California charities and non-profits a critical source of funding.

SUPPORT

Attorney General Rob Bonta (sponsor)
California Association of Nonprofits
League of California Community Foundations
PayPal, Inc.

OPPOSITION

Classy, Inc.

RELATED LEGISLATION

Pending Legislation:

AB 900 (Reyes, 2021) requires a trustee holding assets subject to a charitable trust to give written notice to the Attorney General at least 20 days before the trustee sells, leases, conveys, exchanges, transfers, or otherwise disposes of all or substantially all of the charitable assets. The bill passed this Committee by a vote of 8-2 and is now pending on the Senate floor.

Prior Legislation:

AB 2208 (Irwin, 2020) was substantially similar to this bill. It passed this Committee by a vote of 7-1. It was placed on the suspense file in the Senate Appropriations Committee.

AB 1539 (Irwin, 2019) would have required a charitable organization to obtain the written consent of another charitable organization before using its name in a solicitation through means of the internet, unless the soliciting organization meets specified requirements, and would have required a charitable organization soliciting pursuant to these provisions to file an annual report, under oath, that contains specified information

with the Attorney General's Registry of Charitable Trusts. The bill was held in the Assembly Committee on Privacy and Consumer Protection.

AB 2556 (Irwin, 2018) would have authorized under the Act the ability to engage in charitable crowdfunding solicitations by a new category of persons raising money for charitable purposes called crowdfunding solicitors for charitable purposes, subject to various registration and reporting requirements. The bill died in the Assembly Appropriations Committee.

PRIOR VOTES:

Assembly Floor (Ayes 59, Noes 18)

Assembly Appropriations Committee (Ayes 12, Noes 4)

Assembly Privacy and Consumer Protection Committee (Ayes 8, Noes 3)
