

Date of Hearing: May 11, 2020

ASSEMBLY COMMITTEE ON JUDICIARY

Mark Stone, Chair

AB 2208 (Irwin) – As Amended May 4, 2020

SUBJECT: CHARITABLE ORGANIZATIONS: CHARITABLE FUNDRAISING PLATFORMS AND PLATFORM CHARITIES

KEY ISSUE: SHOULD CHARITABLE FUNDRAISING PLATFORMS AND PLATFORM CHARITIES BE SUBJECT TO REGULATION AND OVERSIGHT BY THE ATTORNEY GENERAL?

SYNOPSIS

California law grants the Attorney General significant authority to regulate any entity that holds funds in trust for a charitable purpose, in accordance with the Supervision of Trustees and Fundraisers for Charitable Purposes Act. Building on this existing legal framework, this bill seeks to permit the Attorney General to establish rules and regulations for overseeing online charitable fundraising platforms. In recent years new platforms have arisen for raising donations for charity online. These platforms permit third-party users to set up a fundraiser, the platform then collects the funds on that entity's behalf, and eventually the platform transmits the funds to the charity for which the fundraiser was conducted. However, it appears that much of this online fundraising is being conducted without knowledge or consent of the very charities the third-party was allegedly seeking to help. In some instances, it appears that fundraisers have misstated the goals of the charity and some platforms have shut down before ever giving donations to the non-profit the funds were ostensibly raised for.

Recognizing the need to better regulate this growing form of philanthropic activity, the author and Attorney General Xavier Becerra have convened stakeholder groups to seek common ground on the outlines of a statutory regime that would enable the Attorney General's Office to effectively regulate the industry. The stakeholders that have weighed in include nonprofits and the online fundraising platforms. Although several critical issues remain subject to discussion and debate, this bill reflects the product of initial discussions between the parties. This bill would define an online charitable fundraising platform and platform fundraiser in law and instruct the Attorney General to develop regulations for these entities within the confines provided by this bill.

As currently in print, this bill is supported and sponsored by the Attorney General. The bill receives support in concept from both fundraising platforms, including PayPal, as well as representatives from the non-profit section. However, both groups of stakeholders condition their support on potential amendments that will tighten definitions, better outline the reporting process envisioned by the bill, and clarify exemptions to the mandatory consent from charities to participate in online fundraising envisioned by the bill. At the time of this hearing, all parties appear to be willing to continue discussing the bill in good faith. Furthermore, given the increase in online fundraising that is likely to accompany the COVID-19 pandemic, and is witnessed in the wake of many disasters, the time is ripe for regulating this industry. Although many stakeholders are conditioning support so long as the bill is eventually amended, as currently in print this bill has no known opposition.

SUMMARY: Directs the Attorney General to establish rules and regulations for overseeing charitable fundraising platforms and platform charities within the context of the Supervision of Trustees and Fundraisers for Charitable Purposes Act. Specifically, **this bill:**

- 1) Classifies a charitable fundraising platform as a trustee for charitable purposes subject to the Attorney General's supervision.
- 2) Requires a charitable fundraising platform or platform charity, before soliciting, permitting, or otherwise enabling solicitations, to register with the Attorney General's Registry of Charitable Trusts, under oath, on a form provided by the Attorney General, and specifies that persons or entities that meet the definition of a charitable fundraising platform and platform charity shall register as both.
- 3) Provides that the registration required by 2) must be renewed each year, and requires the Attorney General to impose a fee on each registration to fund the regulation of charitable trusts.
- 4) Requires a charitable fundraising platform or platform charity to file annual reports, under oath, with the Attorney General's Registry of Charitable Trusts on a form provided by the Attorney General.
- 5) Provides that a charitable fundraising platform or platform charity can only solicit, permit or otherwise enable solicitations, or receive, control, or distribute funds from donations for recipient or other charitable organizations in good standing.
- 6) Requires, before a person can complete a donation or select or change a recipient charitable organization, a charitable fundraising platform that specifically performs any of the acts listed in a)-c) of 13) to provide conspicuous disclosures that prevent a likelihood of deception, confusion, or misunderstanding, including, but not limited to, the following:
 - a) A statement that donations are made to the platform charity, when applicable, otherwise a statement that donations are made to the recipient charitable organization. If donations are not made to the platform charity or the recipient charitable organization, then a statement that donations are made to the charitable fundraising platform.
 - b) The circumstances, if any, under which a recipient charitable organization may not receive the donation or a grant of the recommended donation.
 - c) The 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.
 - d) The fees, if any, deducted from or added to the donation or a grant of the recommended donation that are charged by the charitable fundraising platform, platform charity, or any other partnering vendor, other than digital payment processing fees.
 - e) Whether the donation is tax deductible or not, as specified.
 - f) The disclosures required by this subdivision may be provided through a conspicuous hyperlink, so long as the disclosure is conspicuous when the hyperlink is selected.

- 7) Requires, generally, a charitable fundraising platform or platform charity that solicits, permits, or otherwise enables solicitations shall obtain the written consent of a recipient charitable organization before using its name in a solicitation, and states that the written consent must be provided directly to the charitable fundraising platform or platform charity, on behalf of the platform or platform charity and any partnering charitable fundraising platforms expressly identified in an agreement providing consent, by one authorized officer, director, or trustee of the recipient charitable organization.
- 8) Exempts a charitable fundraising platform that specifically performs any of the acts listed in a)-c) of 13) from the provisions of 7) so long as all regulations promulgated by the Attorney General are complied with, and of the following are met:
 - a) The charitable fundraising platform or platform charity only lists the recipient charitable organization's name, address information, employer identification number, or registration number with the Attorney General's Registry of Charitable Trusts;
 - b) The charitable fundraising platform or platform charity that also operates as a charitable fundraising platform conspicuously discloses before persons can complete a donation, or select or change a recipient charitable organization, that the recipient charitable organization has not provided consent, has no association with the charitable fundraising platform, platform charity, or persons using the platform for solicitation purposes when applicable, and has not reviewed or approved any peer-to-peer charitable fundraising content generated by such persons when applicable;
 - c) No fees are deducted from the donation or a grant of the recommended donation that are charged by the charitable fundraising platform, platform charity, or any other partnering vendor, other than digital payment processing fees;
 - d) The charitable fundraising platform or platform charity must remove any recipient charitable organization from its list or any solicitation regarding the recipient charitable organization within 72 hours of a written request by the recipient charitable organization; and
 - e) 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.
- 9) After donors contribute donations based on solicitations described by a)-c) of 13), requires the charitable fundraising platform to promptly provide a tax donation receipt in accordance with existing law.
- 10) Prohibits a charitable fundraising platform or platform charity from diverting or otherwise misusing the donations received through solicitation on the platform, and requires them to hold the donations in a separate bank account from other funds belonging to the fundraising platform or platform charity, and requires a charitable fundraising platform or platform charity to promptly ensure donations and grants of recommended donations are sent to recipient charitable organizations with an accounting of any fees imposed for processing the funds, and in accordance with any rules and regulations promulgated by the Attorney General.

- 11) Provides that when a charitable fundraising platform or platform charity contracts with other vendors to solicit, receive, control, process, distribute, and otherwise account for donations on the platform, the contracts must be available for inspection by the Attorney General.
- 12) Requires the Attorney General to establish rules and regulations necessary for the administration of this section, which are to include, but are not limited to, all of the following:
 - a) The content of the form and other information to be provided by a charitable fundraising platform or platform charity for registration with the Attorney General's Registry of Charitable Trusts, as specified;
 - b) The content of the form and other information to be provided by a charitable fundraising platform or platform charity in annual reports filed with the Attorney General's Registry of Charitable Trusts, as specified;
 - c) The 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; and
 - d) The requirements for holding donations or distributing donations and grants of recommended donations, as specified.
- 13) Defines, "charitable fundraising platform" to mean 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, which includes, but is not limited to, any of the following:
 - a) Lists one or more recipient charitable organizations to receive donations or grants of recommended donations made by donors who use the platform;
 - b) Permits persons who use the platform to solicit donations for, or recommend donations to be granted to, one or more recipient charitable organizations through peer-to-peer charitable fundraising;
 - c) Permits persons who use the platform to select one or more recipient charitable organizations to receive donations or grants of recommended donations made by a platform, platform charity, or other third party person, based on purchases made or other activity performed by persons who use the platform;
 - d) Lists one or more recipient charitable organizations to receive donations or grants of recommended donations made by the platform based on purchases made or other activity performed by persons who use the platform; or
 - e) Provides to charitable organizations a customizable internet-based website, service, or other platform that allows charitable organizations to solicit or receive donations on or through the platform, including through peer-to-peer charitable fundraising. The customizable platform provided by the charitable fundraising platform does not include the charitable organization's own platform, but may integrate with the organization's platform.

- 14) Provides that a “charitable fundraising platform,” as defined in 13), does not include a charitable organization’s own platform that solicits donations only for itself.
- 15) Defines “good standing” to mean that a recipient or other charitable organization’s tax-exempt status has not been revoked by the Internal Revenue Service, or the Franchise Tax Board when applicable, and the organization is registered and in compliance with the reporting requirements of the Attorney General’s Registry of Charitable Trusts when applicable.
- 16) Defines “peer-to-peer charitable fundraising” to mean 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.
- 17) Defines “platform charity” to mean a trustee or a charitable corporation that facilitates acts of solicitation on a charitable fundraising platform, which includes, but is not limited to, either of the following:
 - a) Soliciting donations through a charitable fundraising platform for itself from donors who use the platform with the implied or express representation that the platform charity may grant donations to recipient charitable organizations; or
 - b) Granting funds to recipient charitable organizations based on purchases made or other activity performed by persons who use a charitable fundraising platform.
- 18) Makes various technical and conforming changes to other provisions of the Supervision of Trustees and Fundraisers for Charitable Purposes Act, including adding several references to “charitable fundraising platform” and “platform charity” as necessary.

EXISTING LAW:

- 1) Establishes the Supervision of Trustees and Fundraisers for Charitable Purposes Act. (Government Code Section 12580.)
- 2) 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. (Government Code Section 12598 (a).)
- 3) Defines, for the purpose of the Supervision of Trustees and Fundraisers for Charitable Purposes Act “solicitation” or “soliciting” for charitable purposes to mean any request, plea, entreaty, demand, or invitation, or attempt thereof, to give money or property, in connection with any of the following:
 - a) Any appeal is made for charitable purposes;
 - b) The name of any charity, or philanthropic or charitable organization, is used or referred to in any such appeal as an inducement for making any such gift;

- c) Any statement is made to the effect that the gift or any part thereof will go to or be used for any charitable purpose or organization; or
 - d) The name of any organization of law enforcement personnel, firefighters or other persons who protect the public safety is used or referred to as an inducement for transferring any money or property, unless the only expressed or implied purpose of the solicitation is for the sole benefit of the actual active membership of the organization. (Government Code Section 12581.2.)
- 4) Requires the Attorney General to maintain a register of charitable corporations, unincorporated associations, and trustees and of the particular trust or other relationship under which they hold property for charitable purposes and, to that end, may conduct whatever investigation is necessary, and to obtain from public records, court officers, taxing authorities, trustees, and other sources, whatever information, copies of instruments, reports, and records are needed for the establishment and maintenance of the register. (Government Code Section 12584.)
- 5) Requires, generally, every charitable corporation, unincorporated association, and trustee subject to the provisions of 1) 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. (Government Code Section 12586 (a).)
- 6) Authorizes the Attorney General to impose a registration fee on entities that must register in accordance with the Supervision of Trustees and Fundraisers for a Charitable Act and in addition to the fee, provides that a charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer may be assessed a late fee or an additional fee of \$25 for each month or part of the month after the date on which the registration statement and financial report were due to be filed or after the period of extension granted for the filing if the charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer does any of the following:
- a) Exists and operates in California without being registered.
 - b) Solicits contributions in California without being registered or, if applicable, bonded.
 - c) Fails to file its first report no later than four months and 15 days following the close of each calendar or fiscal year and has not requested an extension of time to file the annual report.
 - d) Fails to file its subsequent annual report no later than four months and 15 days following the close of each calendar or fiscal year subsequent to the filing of the first report and has not requested an extension of time to file the annual report.
 - e) Fails to file its annual registration/renewal form within the time specified by the Attorney General irrespective of other report filing requirements.

- f) Fails to correct the deficiencies in its registration or annual report within 10 days of receipt of written notice of those deficiencies. (Government Code Sections 12586.1 & 12587.)
- 7) Provides that the Attorney General is 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, including, but not limited to, the costs of auditors, consultants, and experts employed or retained to assist with the investigation, preparation, and presentation in court of the charitable trust enforcement action. (Government Code Section 12598 (b).)
- 8) Provides when awarding attorneys' fees and costs in accordance with 7), the court must order that the attorney's fees and costs be paid by the charitable organization and the individuals named as defendants in or otherwise subject to the action, in a manner that the court finds to be equitable and fair. (Government Code Section 12598 (c).)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: In recent years a growing segment of the social media world has included charitable fundraising platforms, websites, and applications whereby a person can seek to raise funds for a non-profit charity or their own social needs. The existing laws and regulations regarding charitable fundraisers and trustees have not kept pace with the growing diversity of charitable fundraising platforms. Accordingly, this bill seeks to provide a basic legal framework for the Attorney General to begin properly regulating the online fundraising industry.

The existing legal framework for regulating charities is inadequate for online fundraising platforms. In recent years several new companies have arisen to boost charitable fundraising on the internet. Most prominent of these companies is GoFundMe, a crowd-sourcing platform whereby individuals, businesses, and nonprofit organizations can establish fundraising pages for a myriad of causes. The pages, which solicit funds for causes ranging from personal emergencies to other third-party charitable organizations, can then be widely shared on social media in an attempt to gain contributions from the friends and family of the page's creator. Recognizing the success of GoFundMe, numerous other traditional social media or internet commerce companies, including Facebook, Amazon, eBay, and PayPal, all established charitable fund raising platforms or other fundraising systems of their own.

The existing law governing charitable fundraising in California, the Supervision of Trustees and Fundraisers for Charitable Purposes Act, was generally crafted in the pre-internet fundraising world. That Act envisions a traditional fundraising model, where a non-profit or other charitable entity directly solicits donors for contributions. The donors, in-turn, then choose to give directly to a non-profit performing a public service that the donor supports. To protect donors, the existing law, focuses on ensuring that charitable organizations do in fact make a good faith effort to carry out the charitable mission stated by the organization and that the charity is properly serving as a trustee of the charitable assets and not mispending their donations. However, unlike a traditional fundraiser, the online fundraising platform do not solicit funds for themselves, rather they serve as a conduit for another party's fundraising appeals. The lack of a direct nexus between the person making the fundraising appeal and the entity purportedly receiving the donation raises several concerns unaddressed by existing law: first, there is no guarantee the donation actually reaches the charity, if the platform shuts down before the funds are transmitted the charity does not receive the funds; secondly, the charity itself cannot control the statements made by the party soliciting the donation, thereby enabling a person to make

statements contrary to the public mission of the charity; third, there is no guarantee that a charity receiving funds is in good standing with the Attorney General under existing law; and finally, the existing law provides little to no reporting or tracking of donations made via online platforms. Thus, under existing law, a well-meaning person may see a donation appeal from a friend who makes inaccurate statements about a charity, nonetheless that person donates via an online platform to the charity (which may or may not be in good standing in California), and the donation may be delayed or may never actually get to the charity. Without significant updates to the existing law, despite being tasked with overseeing charities in California, the Attorney General would have little means of tracking any step of the above discussed process.

This bill. Seeking to address the current lack of oversight and begin regulating online charitable fundraising platforms, this bill adopts a framework for the Attorney General's regulations of the online fundraising industry. First, this bill adopts a basic definition for many of the entities set to be regulated as online fundraisers. Of note, this bill generally defines a "charitable fundraising platform" as a "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." The bill additionally goes on to define terms including platform charity, peer-to-peer charitable fundraising, and good standing for the purposes of the bill. The bill additionally describes the process whereby the charitable fundraising platform or platform charity must register with and pay fees annually to the Attorney General. Furthermore, the bill establishes a process whereby charitable fundraising platforms must submit annual reports to the Attorney General.

In terms of specific policies advanced by the bill, this bill provides that charitable fundraising platforms or platform charities can only solicit, permit or otherwise enable solicitations, or receive, control or distribute funds from donations for recipient or other charitable organizations in good standing, thus eliminating the issue whereby money passes from a unwitting donor to a charity not currently in good standing with the Attorney General pursuant to existing charitable regulations. Additionally, the bill mandates a series of conspicuous disclosures, that must be provided to a donor before a donation can be made, that are designed to prevent the possibility of deception, confusion, or misunderstanding of the donor. Notably these disclosures include a disclosure that donations are made to the platform and not directly to a charity, the time it will take for the donation to be sent to the charity, the circumstances in which a charity may not receive the donation, a statement about any fees charged by the platform, and whether or not the donation is tax deductible.

Seeking to avoid issues whereby a charity is unaware of activities undertaken on its behalf, the bill generally requires a platform to gain a charity's consent prior to permitting donations to be collected on the charity's behalf. Additionally, this bill specifies how funds collected by a platform for a charity's use are to be segregated from other funds raised or collected by the platform. Finally, and most importantly, this bill provides the Attorney General specific authority to develop regulations for the industry consistent with the broad parameters set forth in the bill.

Author's statement. This measure is the latest in a series of bills introduced by the author seeking to provide some semblance of regulatory clarity and guidance to online charitable fundraising platforms. In support of this bill, which is being advanced in cooperation with the Attorney General, the author states:

AB 2208 provides a necessary update to California's charitable fundraising laws to ensure donors, non-profits, and online charity 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

By defining online charitable fundraising platforms and platform charities, this bill seeks to identify and regulate a diverse array of online fundraising activity. Seeking to encompass the varying types of platforms used for online fundraising, this bill is primarily focused on two separate, yet equally important, entities within the online fundraising space. First is a charitable fundraising platform, which is the broader category of platforms and is generally defined as an internet platform that facilitates acts of solicitation of charitable donations. This classification would likely encompass Facebook and others that enable fundraising on their sites. Secondly, this bill seeks to regulate platform charities, or non-profits that directly contract with a fundraising platform to collect and process fundraising proceeds for themselves or other entities.

This bill proposes to impose registration, reporting, and consumer disclosure requirements on each of these entities. In the event that an internet company legally meets the definition of both a charitable fundraising platform and a platform charity, which based on the broad definition of charitable fundraising platform appears to be technically possible, this bill would require the entity to register and submit reports as both types of charitable fundraisers. The separate, yet potentially overlapping, regulatory categories is driven by the need to provide the Attorney General flexibility to regulate a rapidly evolving industry. Some organizations that are likely to qualify as a charitable fundraising platform, wrote to the Committee to outline concerns that the definitions in this bill may be too broad and potentially limitless in the amount of activities that the bill may regulate. However, as mentioned this industry is evolving rapidly, and the scope of these two definitions should ensure that nearly all iterations of online fundraising fall within the scope of one of the two categories, thus limiting the ability for future loopholes to undermine the regulatory framework that this bill proposes to develop.

Enhancing the disclosures provided by online platforms to the Attorney General. This bill requires charitable fundraising platforms and platform charities to submit annual reports, under oath, to the Attorney General. This reporting requirement is similar to many of the requirements in existing law that apply to other charitable entities in that this bill defers the reporting to a form developed via regulation by the Attorney General. The fact that the contents of the reporting is being deferred to regulation is consistent with the existing law governing charitable reporting. Several platforms, however, have raised concerns to this Committee about potentially overlapping reporting. They note that this bill would require an entity qualifying as both a charitable fundraising platform and a platform charity to submit two reports, one for each registered entity. Although this may be somewhat onerous on the regulated community, the provisions appear prudent. The reports developed for charitable fundraising platforms may differ from those developed for platform charities. Accordingly, the dual reporting seem reasonable. Nonetheless, as the bill advances, the author may wish to clarify the reporting language to enable the Attorney General, by regulation, to streamline the reporting if the Attorney General deems such a policy prudent.

Beyond the administrative burden of the reports, concerns have been raised to the Committee that the existing bill does not mandate the disclosure of the report to the public. The California Association of Nonprofits seeks amendments to make all of the reports transmitted to the Attorney General public. It is not entirely clear from the text of the existing bill that the Attorney General lacks the authority to publish the reports. However, to avoid future confusion, should this bill advance stakeholders may wish to clarify the types of information that must be disclosed to the public, may be disclosed, and must be withheld to protect privacy, so long as the provisions comport with the broad outlines of the California Public Records Act.

Solving the charitable consent problem. One of the largest issues posed by the rapid growth of online fundraising is that many of the very charities a person purports to fundraise for have no idea somebody is soliciting donations on their behalf. Without knowing who is conducting solicitations on their behalf, charities cannot ensure that their mission and message is being responsibly presented to the public. Furthermore, given that the charity is unaware of the solicitation, the charity cannot guarantee to donors that the money will ever make it into their coffers, thus potentially angering an otherwise well-meaning donor.

To combat this problem, this bill will require most charitable fundraising platforms or platform charities to obtain the written consent of a charitable organization before solicitations can be made on their platform on the charity's behalf. Notably, this bill exempts platforms from the consent requirement so long as the platform is registered with the Attorney General, informs donors of the charity's lack of consent to the fundraising, the platform deducts no fees from the donation, removes a charity from the service upon written notice, and does not require the charity to accept solicitations as a condition of being on the platform. While these exemptions seem to fit within the bill's broader goal of providing donor's notice, the California Association of Nonprofits contends that these provisions do not go far enough to help charities. They argue that the, "written-consent exception leaves nonprofits vulnerable to having their name used inappropriately for solicitation." Indeed, the existing bill does not wholly eliminate the consent problem that has plagued online fundraising. However, this bill does seek to provide charities who learn of the use of their name to be able to remedy the problem within 72 hours. As all stakeholders involved with this bill have relayed to this Committee, the measure remains a work-in-progress. Accordingly should this bill advance, ongoing discussions will be necessary to determine the proper balance of the charitable consent provisions to ensure that charities, and their well-deserved reputations, are protected. Nonetheless, even as currently in print, this bill appears to offer a worthwhile improvement over the status quo regarding charitable consent in online fundraising.

Statutorily outlining the Attorney General's regulatory process balances the need for legal clarity with flexible oversight of a rapidly growing industry. This bill envisions establishing a regulatory framework for charitable fundraising platforms and fundraising platforms based around four key areas: contents of the form required to register with the Attorney General; contents of the annual reports provided to the Attorney General; requirements for any written consent agreements between a charity and a platform; and, requirements for holding donations or distributing donations and grants of recommended donations. The regulations will allow the Attorney General to build-up a robust system of oversight of the new charitable entities. It should be noted, however, that without the formal regulations in place, much of the legal clarity in this field that all parties involved with this bill seek will not be fully achieved. Accordingly, as this bill advances the author and stakeholders may wish to set a date by which the Attorney General must complete the initial regulatory framework for online charity platforms.

Ongoing discussions between stakeholders will likely further refine this bill. This bill is the product of several months of discussions between the author, Attorney General's Office, charities, and platform-related stakeholders. It has become clear to this Committee that many of the discussions that were proving fruitful throughout the early portion of 2020 stalled as a result of the COVID-19 related stay-at-home orders. Paypal, a provider of online fundraising services notes that more refinement and discussions are needed to address issues related to several definitions, including the "charitable fundraising platform" and "good standing." Additionally, PayPal seeks clarification on the logistics of the annual reports, scope of the consent provisions, and the fees imposed by the Attorney General. Similarly, the California Association of Nonprofits supports the concept of the measure but argues that the exceptions to the consent provisions must be removed from the bill, seeks full access to records received by the Attorney General, and argues for additional definitional clarity for some terms. Although significant stakeholder engagement is needed before this bill can be fully approved by the Legislature, in its current form it provides much needed regulatory guidance for online charitable fundraising. Furthermore, given the COVID-19 pandemic, like other man-made and natural disasters, is likely to spur an increase in online fundraising, this Committee does not believe it is prudent to wait another year to establish a legislative framework for online charitable fundraising. Accordingly, it is expected that stakeholder negotiations will continue throughout the remainder of the legislative session to ensure that whatever the final framework the stakeholders agree to fairly regulates the industry while properly protecting charities and the donating public.

ARGUMENTS IN SUPPORT: This bill is sponsored by California Attorney General Xavier Becerra and the Department of Justice. In support of this bill, the Attorney General 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 Attorney General's Office 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.

AB 2208 would enable the Attorney General to exercise proper supervision over Internet platform operators.

Several organizations have written to support the bill if amended. The proposed amendments appear to address areas of ongoing discussion between stakeholders in the bill. Nonetheless, many organizations support the concept of the bill. Paypal, writing in support of the premise of the legislation states:

Right now, 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 months ahead. Responding charities and non-profits, including those not enrolled with PPGF, are in urgent need of the funding we, and other platforms like ours, can provide. We believe this draft legislation provides a path forward to offer California charities and non-profits a critical source of funding.

Similarly, supporting the measure in concept while seeking amendments, the California Association of Nonprofits states:

Although CalNonprofits agrees with the intent and much of the content of the bill, we believe it still falls short of providing the restrictions needed to ensure that the donation is received by the recipient nonprofit in a timely way, to fully protect the integrity of the donor-nonprofit relationship, and to provide full transparency in the online platform donation process.

REGISTERED SUPPORT / OPPOSITION:

Support

California Department of Justice (sponsor)
California Association of Nonprofits (if amended)
PayPal (if amended)
The Nonprofit Alliance (if amended)

Opposition

None on file

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