

ASSEMBLY THIRD READING

AB 2208 (Irwin)

As Amended May 4, 2020

Majority vote

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.

Major Provisions

- 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), above, 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 to provide conspicuous disclosures that prevent a likelihood of deception, confusion, or misunderstanding, including, as specified.
- 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 specified acts so long as all regulations promulgated by the Attorney General are complied with, as specified.

- 9) After donors contribute donations based on solicitations, as provided, 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 bill.
- 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, as specified.
- 14) 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.
- 15) 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.
- 16) 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.

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.

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.

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. 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.

According to the Author:

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

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.

Arguments in Opposition:

TechNet writes in opposition unless amended, "TechNet would like to highlight a few specific concerns we have with the current language of AB 2208 and look forward to working with you on. We also believe there may be additional clean up in the language that is warranted.

Overall, TechNet's goal is to ensure that AB 2208 enhances online charitable fundraising efforts that benefit platforms, donors, and charities alike. We hope to avoid requirements that would overburden platforms and force them to reevaluate the viability of their successful charitable structures."

FISCAL COMMENTS:

According to the Assembly Appropriations Committee:

- 1) Costs (General Fund/Registry of Charitable Trusts Fund) to the Department of Justice (DOJ) of \$395,000 in fiscal year (FY) 2020-21 and \$618,000 annually thereafter in increased workload. DOJ estimates workload will increase by 444 hours requiring four additional positions.
- 2) Unknown annual increased revenue to the DOJ in first-time and ongoing registration fees from Charitable Fund Platforms. Fees range from \$25 to \$300, based on the organization's gross annual revenue.

VOTES:**ASM JUDICIARY: 8-2-1**

YES: Mark Stone, Chau, Chiu, Gonzalez, Holden, Kalra, Maienschein, Reyes

NO: Kiley, Obernolte

ABS, ABST OR NV: Gallagher

ASM APPROPRIATIONS: 14-4-0

YES: Gonzalez, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Diep, Eggman, Gabriel, Eduardo Garcia, Petrie-Norris, McCarty, Robert Rivas

NO: Bigelow, Megan Dahle, Fong, Voepel

UPDATED:

VERSION: May 4, 2020

CONSULTANT: Nicholas Liedtke / JUD. / (916) 319-2334

FN: 0002864