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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2019 - 2020 Regular Session

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### **AB 2208 (Irwin) - Charitable organizations: charitable fundraising platforms and platform charities**

**Version:** July 2, 2020

**Urgency:** No

**Hearing Date:** August 13, 2020

**Policy Vote:** JUD. 7 - 1

**Mandate:** Yes

**Consultant:** Shaun Naidu

**Bill Summary:** AB 2208 would subject charitable fundraising platforms and platform charities, as those terms are defined, to the Supervision of Trustees and Fundraisers for Charitable Purposes Act. It also would require them to register with the Attorney General and submit specified reports and would allow them to solicit donations on behalf of a charitable organization without obtaining prior written consent if certain conditions are met.

**Fiscal Impact:** The Department of Justice reports ongoing annual personnel costs of \$618,000 associated with this measure. These costs would be offset in whole or in part, depending on the fee amounts established and how many entities register, by registration and annual renewal fees paid by charitable fundraising platforms and platform charities. (Special Fund\*, General Fund)

Specifically, the department indicates that it would require 1.0 Staff Services Analyst, 1.0 Deputy Attorney General, 1.0 Investigative Auditor, and 1.0 Legal Secretary to handle the additional workload resulting from AB 2208.

\*Registry of Charitable Trusts Fund—structurally imbalanced

**Background:** The Supervision of Trustees and Fundraisers for Charitable Purposes Act applies to all 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 coventurers over which the state or the Attorney General has enforcement or supervisory powers. The act vests the Attorney General with the primary responsibility for supervising charitable trusts in California, for ensuring compliance with trusts and articles of incorporation, and for the protection of assets held by charitable trusts and public benefit corporations. The Attorney General has broad powers under common law and California statutory law to carry out these charitable trust enforcement responsibilities.

The act, among other things, requires the Attorney General to maintain a register 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. It also, generally, requires 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 the rules and regulations

(related to the time for filing reports, the contents thereof, and the manner of executing and filing the reports) promulgated by the Attorney General.

Additionally, the act prohibits certain practices in the planning, conduct, or execution of any solicitation or charitable sales promotion. Prohibitions include (i) misrepresenting or misleading anyone in any manner to believe that another 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 (ii) representing that any part of the contributions solicited by a charitable organization will be given or donated to another charitable organization unless that organization has consented in writing to the use of its name prior to the solicitation. (The written consent must be signed by one authorized officer, director, or trustee of the charitable organization.)

**Proposed Law:** This bill would:

- Establish that charitable fundraising platforms and platform charities are trustees for charitable purposes subject to the Attorney General's supervision.
- Define "charitable fundraising platform" to mean certain legal entities that use the internet to provide a website, service, or other platform to persons in this state, and perform, permit, or otherwise enable certain acts of solicitation to occur.
- Define "platform charities" to mean a trustee or charitable corporation as defined under the act that facilitates described acts of solicitation on a charitable fundraising platform.
- Require a charitable fundraising platform, before soliciting, permitting, or otherwise enabling solicitations, to register and annual renew with the Attorney General's Registry of Charitable Trusts, under oath, on a form provided by the Attorney General.
- Require persons or entities that meet the definition of a charitable fundraising platform and platform charity to register and annual renew as a charitable fundraising platform.
- Require the Attorney General to impose registration and renewal fees and deposit revenues in the Registry of Charitable Trusts Fund, for use as specified.
- Require a charitable fundraising platform to file annual reports, under oath, with the registry on a form provided by the Attorney General.
- Restrict a charitable fundraising platform or platform charity to soliciting, permitting, or otherwise enabling solicitations, or receiving, controlling, or distributing funds from donations for recipient or other charitable organizations in good standing, as defined.
- Require a charitable fundraising platform or platform charity that performs, permits, or otherwise enables specific acts of solicitation, before a person can complete a donation or select or change a recipient charitable organization, to provide prescribed conspicuous disclosures that prevent a likelihood of deception, confusion, or misunderstanding.
- Require a charitable fundraising platform or platform charity that solicits, permits, or otherwise enables solicitations to obtain the written consent of a recipient charitable organization before using its name in a solicitation, as prescribed, except for certain acts of solicitation if specific requirements are met.
- Require a charitable fundraising platform or platform charity, after donors contribute donations based on certain solicitations, to promptly provide a tax donation receipt in accordance with specified provisions.

- Prohibit a charitable fundraising platform or platform charity from diverting or otherwise misusing the donations received through solicitation on the charitable fundraising platform and require the entity to hold them in a separate bank account and to ensure donations and grants of recommended donations are sent promptly to recipient charitable organizations with an accounting of any fees imposed for processing the funds and in accordance with rules and regulations.
- Require the Attorney General to establish rules and regulations they determine to be necessary for the administration of the provisions of this bill, in accordance with prescribed requirements.

**Related Legislation:** AB 1539 (Irwin, 2019-2020 Reg. Sess.) 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. AB 1539 was never heard in the Assembly Committee on Privacy and Consumer Protection.

AB 2556 (Irwin, 2017-2018 Reg. Sess.) would have authorized under the Supervision of Trustees and Fundraisers for Charitable Purposes 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. AB 2556 was held on the Suspense File of the Assembly Committee on Appropriations.

**Staff Comment:** The Registry of Charitable Trusts Fund has experienced significant revenue decreases in recent years to the extent that it is structurally imbalanced. From FY 2018-2019 to FY 2019-2020, the fund revenues dropped by 39 percent; proposed revenue for FY 2020-2021 is projected to remain consistent with 2019-2020, however. The FY 2020-2021 budget anticipates a beginning balance of \$5.276 million, revenues of \$4.631 million, expenditures of \$8.2 million, and an ending reserve of \$1.707 million. Given the operational deficit of the fund, the added expense resulting from AB 2208 would create cost pressure on the General Fund to backfill any shortage if the registration and renewal fees collected from charitable fundraising platforms and platform charities are not sufficient to offset the associated costs.

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