

Alert | Marketing, Advertising, Sweepstakes & Promotions Law/Retail



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California Enacts New Law Affecting Cause-Related Marketing Programs

On Oct. 7, 2021, California Gov. Newsom signed into law [AB 488](#) to regulate online fundraising platforms engaged in the business of soliciting contributions for charities or facilitating the solicitation of donations via the internet.

The main purpose of the bill is to create a regulatory system tailored to the realities of contemporary online charitable fundraising (crowdfunding, do-it-yourself campaigns, etc.). Such tailoring is a laudable goal to avoid the alternative of applying traditional “commercial fundraiser” laws to online businesses not operating the way the traditional laws contemplated.

A byproduct of the new law, however, is to modify the regulation of ordinary cause-related marketing programs in ways that may surprise some online retailers and other merchants who never have thought of themselves as “charitable fundraising platforms” or being involved in the business of charitable fundraising.

Specifically, the new law may affect cause-related marketing programs in the two areas described below. The effective date of the new law is delayed until Jan. 1, 2023, to allow the California Attorney General’s office time to promulgate regulations to implement the new law.

Charitable Sales Promotions

A charitable sales promotion is the offering of commercial goods or services based on a representation that the purchase or use thereof will benefit a charitable organization or purpose. A merchant regularly engaged in business other than raising funds for charity and who conducts a charitable sales promotion is deemed a commercial coventurer (CCV). Over 20 states, including California, have laws to this general effect.

Historically, a CCV in California did not need to register with the state as long the CCV (a) had a written contract with the benefitting charity(ies), (b) delivered promised funds to the charity(ies) on a rolling 90-day basis, and (c) included an accounting with each payment to confirm accurate calculation of the amount.

Under AB 488, the following changes will occur:

1. Online. Registration as a “charitable fundraising platform” will be required where CCV programs are conducted online, in whole or in part, for the benefit of more than six end-beneficiary charities in any calendar year.
2. In-store (or for fewer than seven beneficiary charities online per year). Programs conducted in brick-and-mortar stores without an online component, or to benefit six or fewer end-beneficiary charities, remain governed by the existing CCV laws with no registration requirement as long as the CCV has the appropriate contract with the charity(ies), delivers money to the charity(ies) on a rolling 90-day basis, and provides an accounting with each payment to support the amount being delivered.
3. Combined Online/In-store. Follow the rule for online.

Donation-At-Checkout (‘Roundup’) Programs

Sometimes referred to as “roundup” programs (as in “round up” your bill to the next dollar to donate the difference to charity X), donation-at-checkout programs involve an actual solicitation of funds from consumers, separate and apart from the purchase price of a product or service. Accordingly, such programs do not bring a merchant within the existing CCV definition in California (or most other states).

Historically, most states (with minor exceptions) have not regulated such programs where the merchant is not compensated in any way to conduct the program, does not retain any of the consumer donations, and delivers all donations promptly to the charity.

Under AB 488, the following changes will occur for programs available to consumers in California:

1. Online. Registration as a “charitable fundraising platform” will be required as of Jan. 1, 2023. Despite requests from organizations representing the retail industry, the drafters of AB 488 declined to adopt language to treat donation-at-checkout programs in similar fashion to CCV programs.
2. In-store. In declining to treat donation-at-checkout programs like CCV programs, the bill’s drafters pointed out that existing law already technically requires retailers conducting in-store donation-at-checkout programs to register as charitable “trustees” under Cal. Gov. Code 12582(b). While this point technically is correct, it misses the fact that (a) merchants today

generally do not register themselves as “trustees” for uncompensated donation-at-checkout programs in California or other states, and (b) as a practical matter, treatment parallel to CCV programs (with requirements for contracts, prompt delivery of money and strict accounting) likely would be sufficient to assure the integrity of donation-at-checkout programs, just as for CCV programs. Whether the California regulatory authorities in fact will begin to enforce the “trustee” requirement for in-store donation-at-checkout programs is an open question. Only time will tell how enforcement patterns evolve.

3. **Combined Online/In-store.** Unless AB 488 becomes amended prior to taking effect in 2023, (or unless the AG’s regulations promulgated in 2022 resolve the issue), a retailer conducting a combined online/in-store donation-at-checkout program potentially could be required to register both as a “charitable fundraising platform” (online component) **and** as a charitable “trustee” (in-store component). Again, only time will tell how enforcement patterns emerge or whether any clarifications will be issued to avoid the awkward and duplicative result of double registration by the same retailer for the same program.

A Possible Improvement

To help avoid some of the more awkward results described above, a single sentence could be added at the end of the definition of a CCV in amended Gov. Code § 12599.2(a) as follows:

A person or entity that meets the definition of a charitable fundraising platform under subparagraph (A) of paragraph (1) of subdivision (a) of Section 12599.9, or of a charitable trustee under Section 12582(b), due solely to solicitation of funds on an uncompensated basis and without retaining any portion of the donated funds for its own benefit, for six or fewer recipient charitable organizations per calendar year, shall be deemed a commercial coventurer.

The result would be to treat typical online donation-at-checkout programs by ordinary retailers in the same manner as CCV programs and avoid any need for registration where the merchant (a) is uncompensated, (b) has a written contract with the charity, (c) delivers all funds promptly to the charity within 90 days, and (d) provides an accounting with each payment to support the amount delivered.

Given that the law doesn’t take effect until Jan. 1, 2023, any retailers concerned about the new law may wish to consider initiating lobbying efforts for an amendment to soften the effects on garden-variety donation-at-checkout programs by uncompensated retailers, whether online or in-store.

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