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Effective June 12, California Issues Final Regulations for Charitable Fundraising Platforms Registration Duty for Cause-Marketing Programs

On March 26, 2024, the California Registry of Charities and Fundraisers issued [final regulations](#) to supplement the legal regulation of online charitable fundraising platforms under [California Gov. Code Section 12599.9](#). Effective June 12, 2024, companies acting as online charitable fundraising platforms or platform charities in California – including those conducting the common types of cause-related marketing programs discussed below when offered to consumers in California – will be required to register in California. For background on the three-year evolution of this regulatory process, see our [October 2021 GT Alert](#) and [January 2024 GT Alert](#).

CHARITABLE SALES PROMOTIONS

A charitable sales promotion is the offering of goods or services based on a representation that the purchase or use thereof will benefit a charitable organization or purpose. A commercial coventurer (CCV) is a merchant who conducts a charitable sales promotion while being regularly engaged in business other than raising funds for charity.

Historically, California has not required CCVs to register where (a) the CCV has a written contract with the benefitting charity(ies), (b) the CCV delivers promised funds to the charity(ies) on a rolling 90-day

basis, (c) the CCV includes an accounting with each payment to confirm accurate calculation of the amount, and (d) the benefiting charity is properly registered for fundraising in California.

Under California's new law and regulations, a CCV is required to register as a charitable fundraising platform if it conducts CCV promotions online, in whole or in part, **for the benefit of more than six end-beneficiary charities in a calendar year**. Purely in-store programs, as well as online programs benefiting up to six charities per year, remain under the old law. In addition to registration, companies covered by the new law also must comply with special disclosure and other requirements under the new regulations.

DONATION-AT-CHECKOUT PROGRAMS

Donation-at-checkout or "roundup" programs are where a company invites customers to make a voluntary donation, separate from the purchase price of a product or service. Historically, most states have generally not regulated donation-at-checkout 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 California's law and regulations governing "charitable fundraising platforms," any merchant who conducts an online donation-at-checkout program must now register, and there is **no safe harbor for running such programs to benefit up to six charities in the same year**. As for in-store donation-at-checkout programs, existing [California Gov. Code Section 12582\(b\)](#) technically already requires merchants to register as charitable "trustees." In practice, however, merchants generally do not register as "trustees" for uncompensated donation-at-checkout programs in California or other states. It remains to be seen whether California will become more aggressive in seeking to regulate purely in-store programs as well as those conducted online.

FREE-ACTION PROGRAMS

A free-action program is where consumers are invited to take a cost-free action to trigger a charitable donation by the company sponsoring the program. Examples of cost-free actions are "liking" an online post, re-posting a social media message, and subscribing to an email list. Historically, such programs have gone unregulated (other than background requirements for truthful advertising).

Without defining a free-action program, the new regulations mention such program in passing in [California Gov. Code Sections 314\(o\) and \(p\)](#) as something that will trigger a duty to comply with the online charitable fundraising platform laws and regulations. Notably, without a definition equating such program with CCV-style activity (which free-action programs resemble in many respects but without any cost to the consumer), a company running a free-action program online technically will need to register even for running a single such program – i.e., without the benefit of the exemption for conducting programs for up to six charities in one year.

The odd result is that the registration duty becomes stricter on a merchant who does not charge money to consumers to trigger a charitable donation than on a merchant who sells a product and charges money to consumers to trigger the same donation (at least for up to six charities in one year).

REGISTRATION AND FILING PROCESS

Charitable fundraising platforms will be able to register and submit filings using the Registry of Charities and Fundraisers' Online Filing Service, which is slated to launch before June 12, 2024. Registration will be accepted only online. [Click here for more information about registration, renewal, and reporting.](#)

OTHER TYPES OF ONLINE CHARITABLE FUNDRAISING

This GT Alert deals only with the implications of the California online charitable fundraising law and regulations for the common types of cause-related marketing activity discussed above. Additional types of activity also are covered, such as peer-to-peer fundraising, direct solicitations, and providing of platforms and tools for charities to conduct online fundraising. Companies engaged in those activities should review the statute and regulations carefully to comply.

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