



Tips, Traps, and Trends

Fundraising Developments and Practical Considerations



Cristina Vessels

Counsel | +1 202.344.4706 | cvessels@venable.com

Christina Lara

Associate | +1 202.344.4212 | cllara@venable.com

VENABLE LLP

What We'll Cover



General regulatory framework



Developments in states' charitable solicitation laws



Online fundraising efforts, including charitable fundraising platform rules



Practical realities of maintaining compliance



Consequences and considerations for future fundraising strategy

State Charitable Solicitation Laws

Overview of the Regulatory Landscape

In a Nutshell

Who: Soliciting can be done directly or indirectly, by charities or third parties

What: Registration may be required in states where soliciting occurs

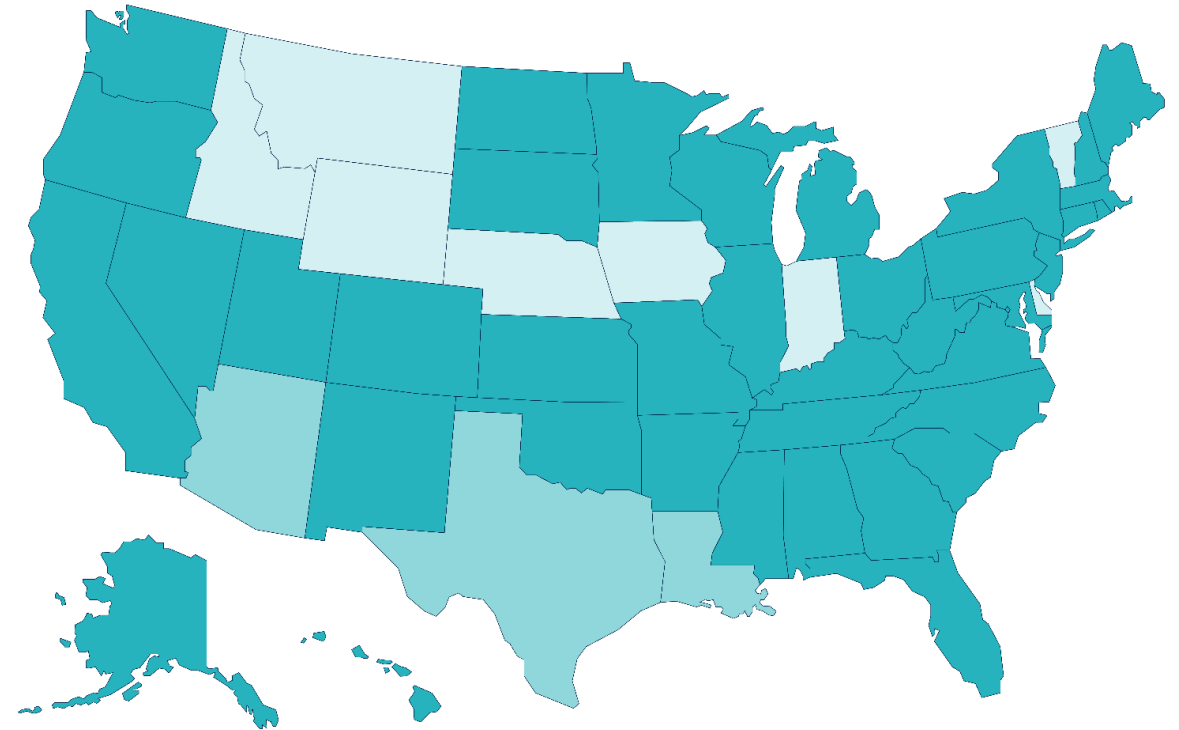
Where: Charity's home state, regionally, or nationwide

How: In-state activities, online only, or some combination of these

Why: States regulate soliciting charitable contributions to **protect the public**

Regulatory Landscape

- More than 40 jurisdictions have charitable solicitation laws on the books
- Not all are generally applicable, for example:
 - *The Texas Law Enforcement Telephone Solicitation Act*
 - *Indiana Professional Fundraiser Consultant and Solicitor Registration*
- But for the most part, the construct is the same
- Registration is typically required before “soliciting” “charitable” “contributions”



- Registration for all, non-exempt nonprofits
- Registration for select nonprofits
- Registration not required

Soliciting Includes *Any* Appeal for Charitable Purposes



Telephone



Email



Direct mail



In-person



Text-to-donate



Peer-to-peer



Online platform, social media, cause-marketing

When Does Online Fundraising Mean In-State Registration?



Framework for Analyzing Online Fundraising

- Online fundraising has evolved significantly since charitable solicitation laws came about
- Charleston Principles (2001)
 - Non-binding guidelines
 - Help nonprofits and state regulators determine when registration required for online efforts
 - Essentially draws a line between active and passive online efforts, and examines the scope of those efforts



Charleston Principles: Registration for Internet Solicitations

Are you at home?

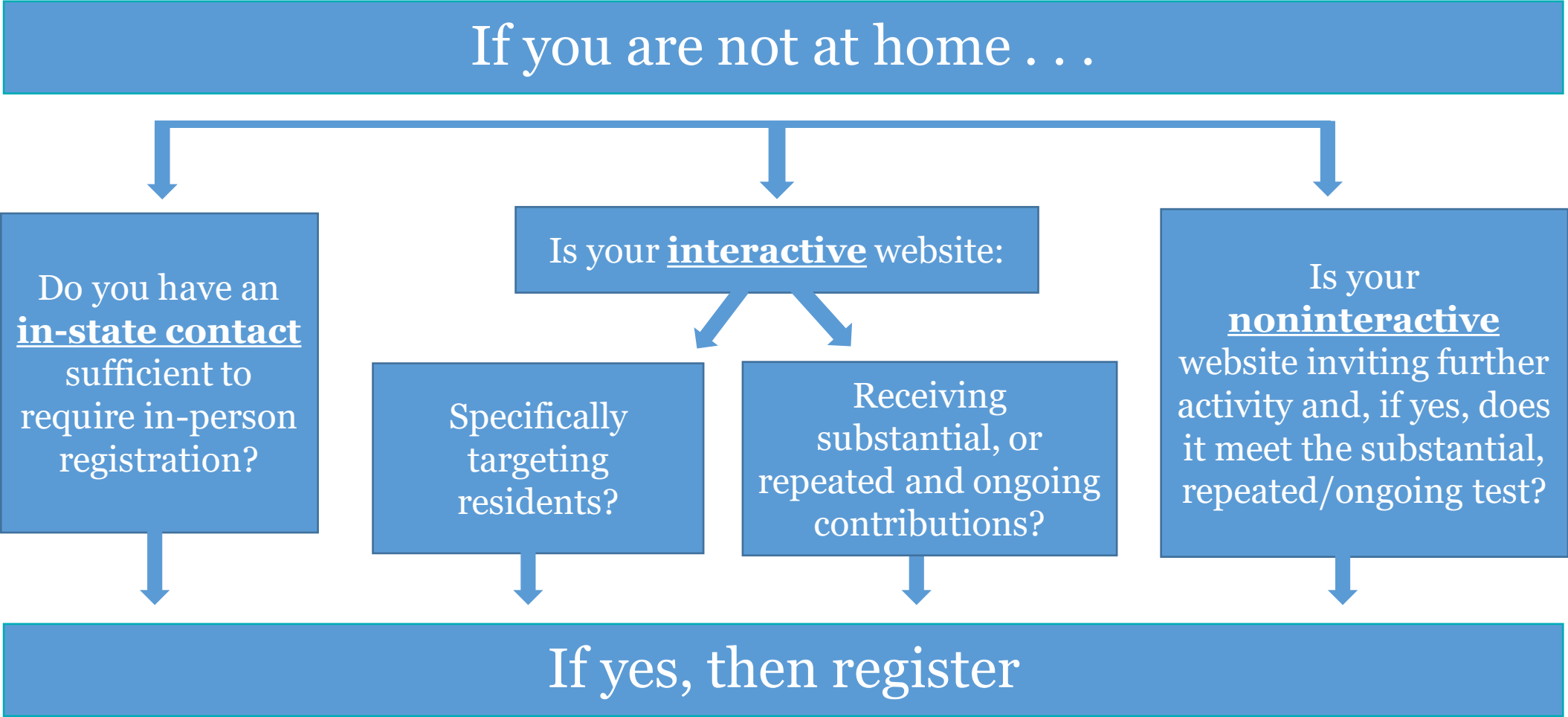


Does your home state have a charitable solicitation law?



If yes, then register

Charleston Principles: Registration for Internet Solicitations



What Does It Mean to “Target” State Residents?



Does your website specifically request contributions from certain state residents?

Does your website impliedly request contributions from certain state residents? Or, conversely, is it obviously local?

Does your organization directly solicit state residents through other methods (advertising, direct mail, etc.)?

What is a Repeated and Ongoing or Substantial Basis?

State	Repeated and Ongoing	Substantial
Colorado	50+ donations	The lesser of \$25,000 or 1% of the organization's total contributions in online contributions from Colorado
Mississippi	25+ donations	\$25,000
Tennessee	100+ donations	\$25,000

Certain Organizations May Be Exempt

- Federal tax-exempt status distinct (Section 501(c) status does not guarantee state exemption)
- Exemptions vary from state to state, but often include:
 - Revenue-based exemption (often \$25,000, aggregate, but sometimes much lower threshold)
 - Religious organizations
 - Educational institutions (accreditation and recognition often matter)
 - Hospitals and limited other health organizations
 - Membership organizations
 - Political groups (though likely regulated under other state code provisions)
- Often must apply or petition for recognition of the exemption; not always automatic

Enforcement Happens

- Charitable solicitation compliance may not draw major headlines
- But charity regulators do monitor for compliance
- And certain fundraising efforts may present traps for the unwary
- So your organization should make a compliance plan



Attorney General Ellison reaches voluntary settlement requiring environmental charity to improve governance

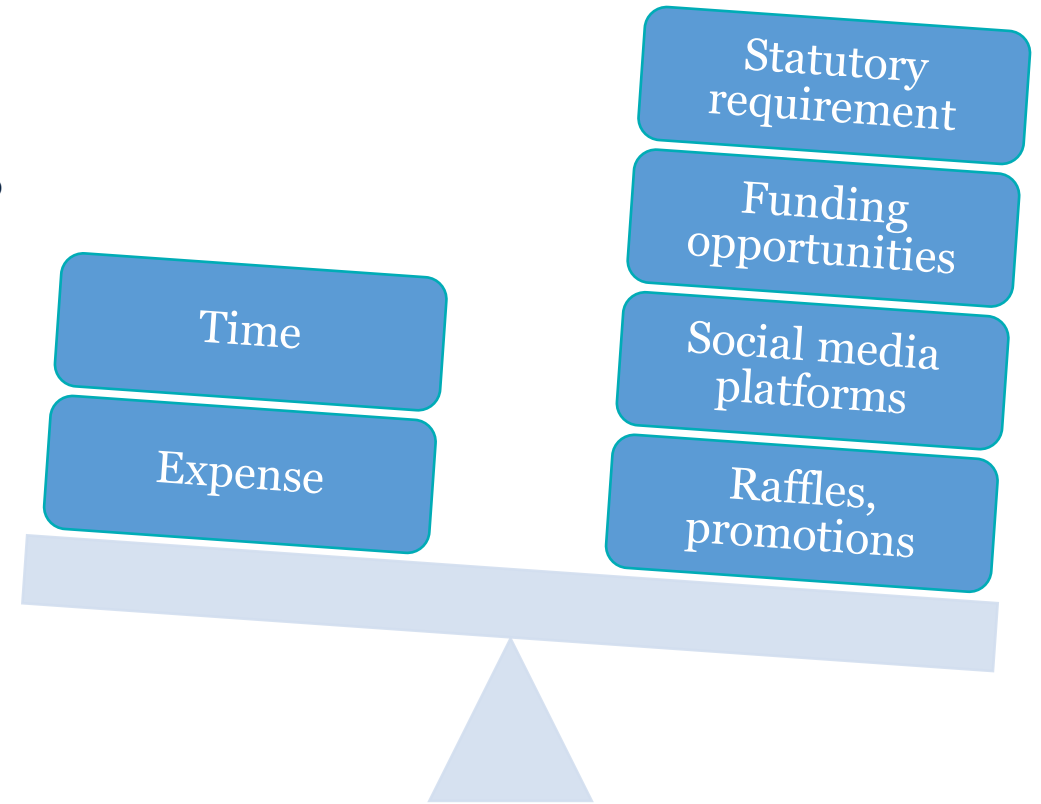
Honor the Earth cooperating to correct previous governance issues

February 2, 2024 (SAINT PAUL) – Minnesota Attorney General Keith Ellison today announced that he has reached a voluntary [settlement](#) with environmental charity Honor the Earth that requires the organization to continue strengthening its governance in the wake of past governance issues uncovered during an investigation by the Charities Division of the Attorney General's Office.

Honor the Earth voluntarily complied with that investigation after a 2023 jury verdict held Honor the Earth liable for sexual harassment and retaliation against a former employee and ordered the organization to pay \$750,000 in actual and punitive damages. The investigation uncovered additional evidence of the former leadership's dismissal of internal misconduct that exposed the organization to significant legal and financial liability. The investigation also revealed additional governance issues, including inadequate financial controls and recordkeeping, and failure to comply with registration requirements for charities that solicit donations in Minnesota.

Registration Considerations

- How the organization plans to solicit?
- Where are major donors located?
- Are you receiving regular donations from a state?
- What are the scope, nature of planned activities?
- What is the size and reputation of (i.e., expectations for) the organization?
- Have you conducted cost/benefit analysis of annual compliance obligations?
- Consider that withdrawing registrations is *much* more complicated than initial registrations
 - Formal attestations of no fundraising usually required



Compliance Tricks, Traps, and Trends

Mechanics and Practical Considerations for Filing Right the First Time

Initial Registration

- State forms (no nationwide, universal filing)
 - Charitable solicitation registration
 - Foreign corporation or state tax registration, too, in limited cases
- Summary of purpose for solicited funds
- Governing documents (articles, bylaws)
- Finances (may also require CPA-reviewed or audited financial statements)
- Filing fees vary (often scaled to revenue)

STATE OF CALIFORNIA
CT-1
(Rev. 02/2021)

MAIL TO:
Office of the Attorney General
Registry of Charitable Trusts
P.O. Box 903447
Sacramento, CA 94203-4470

STREET ADDRESS:
1300 I Street
Sacramento, CA 95814
(916) 210-6400

WEBSITE ADDRESS:
www.oag.ca.gov/charities

**INITIAL
REGISTRATION FORM
STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
REGISTRY OF CHARITABLE TRUSTS**
(Government Code Sections 12580-12599.7)

Part A - Identification of Organization	
Name of Organization: <input type="text"/>	
Mailing Address: <input type="text"/>	Telephone number: <input type="text"/>
City: <input type="text"/>	E-mail address: <input type="text"/>
State: <input type="text"/>	Fax number: <input type="text"/>
ZIP Code: <input type="text"/>	Website: <input type="text"/>
Federal Employer Identification Number (FEIN): <input type="text"/>	Corporation or Organization <input type="text"/>

Part B - Registration Fee

A \$50 REGISTRATION FEE must accompany this registration form. Make check payable to DE

Part C - List of Trustees or Directors and Officers

Names and addresses of all trustees, directors, and officers (attach this information to the back of this form)

Charitable Solicitation Registration Pain Points

- **Know the Signature Requirements:**
 - Wet ink vs. original vs. notarized
 - In-person vs. remote notarization
- **Dot I's, Cross T's:**
 - Small variations can have wide-reaching consequences (e.g., extensive back and forth)
 - Office-specific quirks
 - Downstream effects of falling out of “good standing”
- **Anticipate Processing Delays:**
 - These can impact fundraising efforts and could result in lost corporate partnership opportunities
- **Check for Form Updates:**
 - New agency names, addresses, and forms



Legislative Updates

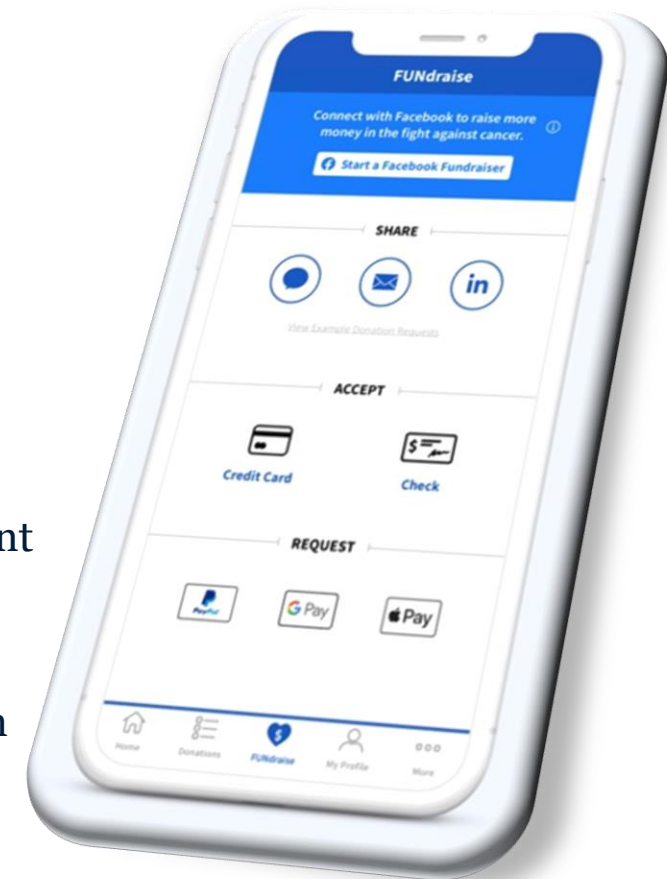
	Tennessee	Utah
<i>Effective Date</i>	July 1, 2024	January 1, 2025*
<i>Initial Charity Registration</i>	N/A	Eliminates requirement for charities to register before soliciting in state
<i>Annual Charity Renewal</i>	Eliminates state-specific form, requires only submission of the Form 990	Eliminates state-specific form, requires only submission of the Form 990*
<i>Charitable Sales Promotions</i>	Requires charities to file contracts with CCVs 5 days before campaign starts	Eliminates requirement for charities to file contracts with CCVs before campaign

Online Fundraising Efforts

How Regulations May (Now?) Affect Your Nonprofit's Digital Efforts

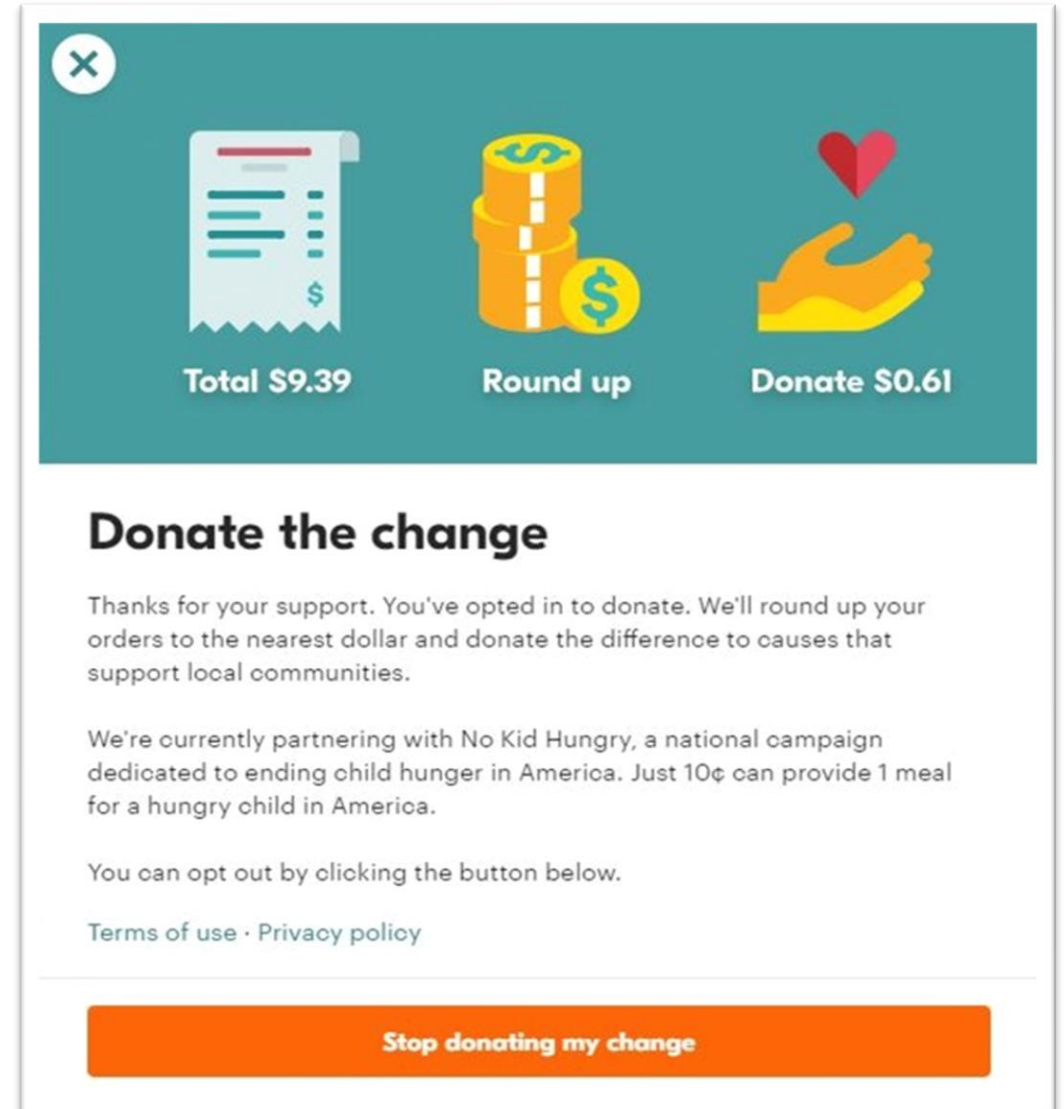
California AB 488: New Framework Effective Jan. 1, 2023

- **Charitable Fundraising Platform:** Any entity that uses the internet to provide a website, service, or other platform to persons in this state, and performs, permits, or otherwise enables acts of solicitation to occur
 - Five examples of types of activities that can give rise to “charitable fundraising platform” status (with regulations pending)
- **Platform Charity:** Generally, a trustee or charitable corporation that facilitates acts of solicitation on a charitable fundraising platform, such as by soliciting with an implied representation that it will grant donations to recipient charitable organizations
- **Recipient Charitable Organization:** A trustee or a charitable corporation listed or referenced by name on a charitable fundraising platform or by a platform charity for solicitation purposes



Platform Solicitation Type A

- **Law:** (A) Lists or references by name one or more recipient charitable organizations to receive donations or grants of **recommended donations made by donors** who use the platform.
- **Proposed Regulations:** (Type A) Soliciting donations or recommended donations, such as micro-donations, round-up donations, or donating any amount, **from donors** who are platform users by listing or referencing by name one or more recipient charities to be sent donated funds.



Total \$9.39 **Round up** **Donate \$0.61**

Donate the change

Thanks for your support. You've opted in to donate. We'll round up your orders to the nearest dollar and donate the difference to causes that support local communities.

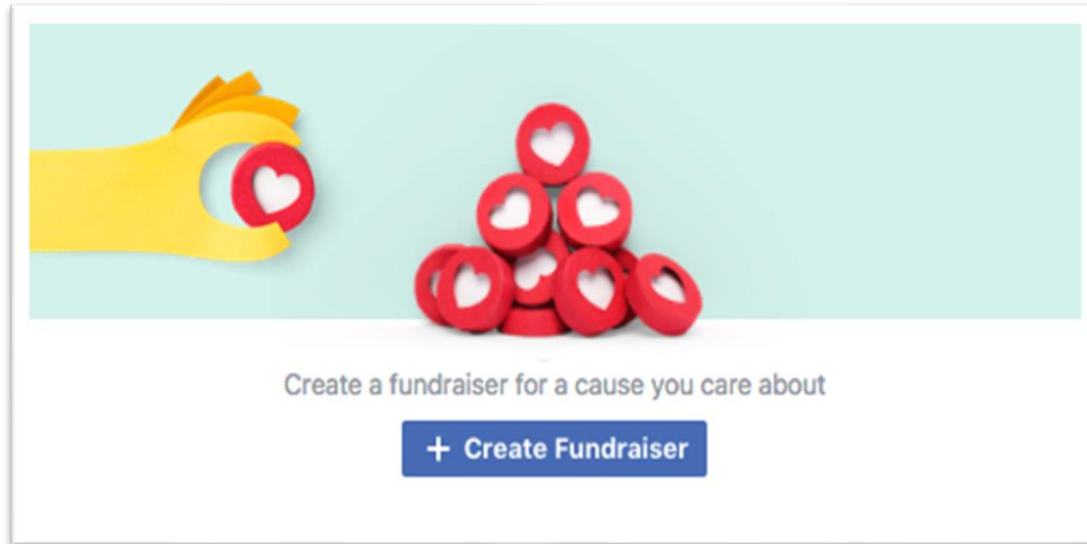
We're currently partnering with No Kid Hungry, a national campaign dedicated to ending child hunger in America. Just 10¢ can provide 1 meal for a hungry child in America.

You can opt out by clicking the button below.

[Terms of use](#) · [Privacy policy](#)

Stop donating my change

Platform Solicitation Type B




- **Law:** (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.
- **Proposed Regulations:** (Type B) Permitting or enabling **crowdfunding** campaigns created by platform users engaging in **peer-to-peer** charitable fundraising, or otherwise permitting or enabling platform users to solicit donations or recommended donations made by other platform users to one or more recipient charities.


Platform Solicitation Type C

One Mission, Many Communities


Our 3,500+ Giving Partners make meaningful change in their communities. The donations made possible by your purchases directly support a variety of organizations, including:




Overnight Shelters




Transitional Living Facilities




Street Outreach Teams



Rehabilitation Centers



Title 1 Schools





Medical Service Professionals

- **Law:** (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.
- **Proposed Regulations: (Type C)** Performing solicitations through charitable sales promotions, coventuring or cause marketing campaigns, or free action programs. In these solicitations, **platform users have the option to select** one or more charities to be sent donated funds. The platform or a third party would make the donations based on the purchases or other activity performed by platform users.

Platform Solicitation Type D


- **Law:** (D) Lists or references by name 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.
- **Proposed Regulations: (Type D)** Performing solicitations through charitable sales promotions, coventuring or cause marketing campaigns, or free action programs. In these solicitations, the charitable fundraising **platform selects one or more charities** to be sent donated funds and makes the donations or recommended donations based on purchases made or other activity performed by platform users.



This Earth Day, Help Us Plant Trees
At TimberTech, we prevent deforestation all year round with our sustainable decking. And this Earth Day, we're celebrating our planet by planting trees.

Here's how you can help:

1. Log in to your favorite social media platform.
2. Like or share our Earth Day post.
3. We'll plant a tree on your behalf.



© 2024 / Confidential / Slide 25

Platform Solicitation Type E

1 Amount

Select donation type

One-time

Monthly
A monthly gift helps us respond to urgent threats and plan ahead.

Select or enter an amount to give

- **Law: (E)** Provides to charitable organizations a **customizable** internet-based website, software as a 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 charitable organization's platform.
- **Proposed Regulations: (Type E)** Providing a charitable fundraising platform to charitable organizations that can be private-labeled or otherwise customized, that is subject to software as a service license agreement between the charitable fundraising platform and charitable organizations, and allows charitable organizations to solicit donations made to them from donors.

Statutory Provisions Currently Enforced

- Implementing regulations are still pending, so only certain portions of the law are in effect
- As of **January 1, 2023**, this means the state is requiring:
 - Charitable fundraising platforms and platform charities should ensure charities benefiting from campaigns are in **good standing**
 - Donations must be **maintained in an account separate** from other funds belonging to a charitable fundraising platform or platform charity
 - Charitable fundraising platforms and platform charities must **make disclosures** that prevent the likelihood of donor deception or confusion, when applicable
 - Comply with the requirements when **soliciting for “non-consenting” charities**

Challenges with Assessing “Good Standing”



- Verifying “good standing” means confirming that a charitable beneficiary is:
 - **Not revoked** by the IRS
 - **Not revoked** by the California Franchise Tax Board
 - **Not prohibited** from soliciting by the California attorney general
- Material difference between *not being prohibited* from fundraising by the state attorney general (what the law defines as “good standing” in § 12599.9(a)(3)) and *being actively registered* to fundraise with the state attorney general
 - **Compare:** The “May Not Operate or Solicit for Charitable Purposes List” may be better for verifying statutory requirements, but it is not updated often
 - **With:** The Registry Search Tool database is current in real time (or close to it), but will not list an organization that is “not prohibited” from fundraising in California

Reestablishing “Good Standing”

- This takes time, resources, and *patience*
- Organizations may be put on ice while corrections are made to a nonprofit’s official status—regardless of whether time spent in the not-in-good-standing penalty box was warranted
- Most platforms will remove organizations that are not in good standing from their full suite of fundraising services (not limited to California fundraising efforts)
- Once government status is back to “good standing,” may need to re-apply for platform-specific fundraising privileges
- Education and final regulations should help, especially with understanding and navigating variations between different lists from the same authorities



Additional Details TBD Pending Regulations

- Annual registration and reporting obligations
- Required disclosures
- Format and content of required consent from recipient charitable organizations
- Timing for tax donation receipts to donors
- Timing for sending donations by platform or platform charities to recipient charitable organization
- Information for donors regarding donations sent by platform or platform charities (e.g., whether donations were sent to the charity or an alternate)



Closing Considerations

- Uncertainty surrounding implementation
- Changes to online fundraising strategy
- Some organizations have been blocked from receiving donations through online fundraising platforms
- Rollout of new platform terms
- Training to identify and address compliance risks
- Lack of compliance/awareness/correct interpretations of the law by corporate partners
- Technical barriers to limiting application to just “persons in this state” (i.e., California)

Questions?

© 2024 Venable LLP.

This document is published by the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address.

VENABLE LLP