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FUNDRAISING REGULATION

Calif. Law Aims to Make Online Giving Safer for Nonprofits and Donors

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ISTOCK

A new law in California means that online fundraising platforms that operate in the state will soon face more regulatory oversight. The goal is to ensure charities receive donations promptly and donors receive accurate information in charitable solicitations.

California, like many other states, has solicitation laws that regulate charities, commercial fundraisers, fundraising counsel, and for-profit companies that promise to donate a portion of proceeds to a nonprofit. But the laws weren't designed for a world in which donors increasingly turn to online fundraising platforms to make charitable contributions.

Now platforms like GoFundMe, Network for Good, and Facebook, as well as retailers that invite shoppers to add a charitable contribution during checkout, will be subject to regulatory supervision and accountability by the state's attorney general.

While the details are still being ironed out, platforms will no longer be able to hide fees, use nonprofits' names to raise funds without permission, or hang onto donations indefinitely, says Lucy Salcido Carter, public policy director at the California Association of Nonprofits, which supported the legislation.

"The law hadn't quite caught up with technology in this area," Salcido Carter says. The new law provides a much needed update.

"It's going to increase people's confidence in using online fundraising mechanisms for making donations to nonprofits," she says. "It's also going to protect recipient nonprofits."

New Disclosures

The law amends the state's charitable fundraising act, creating two new categories of regulated entities: "charitable fundraising platforms" and "platform charities."

Essentially, any website for consumers that facilitates online giving will be required to register with the state attorney general's office and annually report specified information or face penalties for noncompliance. Exceptions include charities' own websites, donor-advised-fund sponsoring organizations, and retailers that enable gifts to six or fewer charities per year.

The law requires platforms to receive written consent from a charity to use its name in a solicitation, with some exceptions. Platforms have to "conspicuously disclose" if they use a charity's name in a solicitation without that charity's consent. Platforms will be required to promptly remove recipient charities from their site or any solicitation if the charity objects in a written request.

Platforms will be required to disclose information including which charities will receive donations and the length of time it takes to send the donation to a recipient charity. The attorney general is authorized to establish regulations regarding the maximum length of time a platform may take to distribute donated funds.

In addition, the law requires that platforms prominently disclose fees so a potential donor can see them before clicking the donation button. Some but not all of those disclosures can be provided through a hyperlink.

Platforms may only facilitate donations for charities in "good standing" with the Internal Revenue Service and California's Franchise Tax Board and are required to provide a tax receipt to donors.

All Eyes on California

The first-of-its-kind law has been several years in the making and could be a harbinger of further efforts to regulate online fundraising, experts say.

"There is a widespread recognition that current statutes don't cover all of the world of online fundraising," Yael Fuchs, president of the National Association of State Charity Officials, said in an email. "Other states are closely watching California."

Tiffany Gourley Carter, policy counsel at the National Council of Nonprofits, says she's not aware of any other states that have similar legislation pending at the moment.

Other states may be relying on litigation as opposed to legislation to make online fundraising safer, Salcido Carter, with CalNonprofits, says.

In 2017, a donor sued the online payment company PayPal after discovering that contributions made through the company's Giving Fund platform never made it to the intended charity. PayPal required that charities register with the platform to claim their donations.

In a settlement last year, PayPal agreed to more disclosures, including notifying donors when their gift would be sent to the charity, alerting them when their gift would be redirected to a charity other than the one they intended, and providing donation data to regulators to ensure its compliance with the agreement. California was not among the 22 states involved in that suit.

Jeff Tenenbaum, a lawyer who focuses on nonprofit legal issues, says the California law will effectively set a nationwide standard for platforms that operate nationally. "Effectively, you have to comply with California in order to do any nationwide campaign," he says.

Right now, there are a lot of unknowns about enforcement. The law goes into effect on January 1, 2023. On January 1 of next year, the attorney general's office can begin establishing rules to administer it.

"The devil's in the details right now as to just how burdensome and what the additional costs are," says Michael Thatcher, CEO of Charity Navigator, a nonprofit platform that is subject to the new law. Last year, donors gave around $32 million to 23,000 nonprofits through Charity Navigator's website.

Bradford Smith, president of Candid, said his organization shares the goals of this legislation. "Looking forward," he says, "we'll want to watch closely to ensure that the regulations are producing the intended results."

Tenenbaum doesn't think the law will bring fundraising platforms to a grinding halt but says it will require a change in business practices. "These are the kind of things that we generally recommend anyway," he says. "Now they're going to be codified into law."

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