



2211 North First Street
San Jose, CA 95131
paypal.com

July 27, 2020
The Honorable Hannah-Beth Jackson
California State Senate
Chair, Senate Judiciary Committee
Sacramento, CA 95814

RE: PayPal AB 2208 Comments - SUPPORT IF AMENDED

Dear Chairwoman Jackson,

On behalf of PayPal, Inc. ("PayPal") and PayPal Charitable Giving Fund ("PPGF"), we are grateful for the opportunity to comment on AB 2208 ("Amended Legislation") and we thank you for selecting the bill for a hearing. AB 2208 reflects a multi-year partnership between the Author, the Attorney General's Office and stakeholders to update California's charitable fundraising laws to ensure donors, non-profits, and online charity platforms can continue their philanthropic work in our state.

PayPal works with PPGF to put forward campaigns that encourage our customers to give, and together we help popular internet businesses create secure and easy ways for people to support charities as a part of their daily life. PPGF receives donations through these customer giving programs, provides donation and donor reports to charities, administers tax benefits for donors, grants the funds to charity, and handles legal registration requirements. With PPGF, we enable people to seamlessly support their communities and the causes about which they feel most passionate.

Online charitable giving platforms have attempted to cast a broad net in terms of charities listed on their websites for potential donations. Many list charities on their platforms beyond those that have provided affirmative consent to raise money for the charity or nonprofit. Offering this range of options expands choice by providing donors access to a broader group of charities than only the organizations that have provided consent to a particular platform. Greater choice translates into greater charitable giving and a corresponding increase in social utility, when donors can connect to a greater range of charities, they are both more likely to give and give more generously.

Last year PayPal processed more than \$10 billion in donations for nonprofits, including nearly \$246 million in funds raised and granted to more than 111,000 charities as part of the programs operated with PPGF. In connection with California giving in 2019, PayPal processed more than \$1.4b in donations for more than 57,000 California nonprofits, and PPGF raised over \$15m to benefit over 6,500 California charities.

During these unprecedented times, the work and vital services provided by non-profits and charities are needed by the public more than ever. Innovative policies and timely resources will ensure that these necessary relief efforts continue through the months ahead. Responding charities and non-profits, including those not enrolled with PPGF, are in urgent need of the funding we, and other platforms like ours, can provide. We believe this draft legislation provides a path forward to offer California charities and non-profits a critical source of funding.

Comments

We provide the following further recommendations below with a view to enhancing online charitable fundraising for the benefit of the sector as a whole. We would be happy to discuss further once you have had a chance to review.

Delayed Implementation

We understand and appreciate that the implementation date of certain provisions of the Amended Legislation would be delayed, allowing the Attorney General to develop regulations, such as for the form and content of the registration and annual reports. We request that section 12599.9(f) regarding written consent, and when written consent would not be required, not be subject to delayed implementation as that section is critical to allow charitable fundraising platforms and platform charities to raise funds to benefit charities during these challenging times where many charities are struggling, especially small, community-based charities.

Definition of “Good standing”

The revised definition of “Good standing” at Section 12599.9(a)(3) in the Amended Legislation is helpful and reflects some of our earlier feedback. PayPal and PPGF would request that the Amended Legislation be revised to clarify that, with respect to lists maintained by the Attorney General, only the following four categories from the May Not Operate/Solicit List of the Attorney General’s Registry of Charitable Trusts would apply:

- Not registered – Cease and Desist Order
- Revoked
- Subject to Cease and Desist Order; and
- Suspended.

As well, amendment 29 of the Amended Legislation provides that if any of the referenced agencies “does not publish a list that allows a charitable fundraising platform or platform charity to reasonably determine the good standing of a recipient charitable organization...then a charitable fundraising platform or platform charity is not required to comply with this paragraph...” As a practical matter, most charitable fundraising platforms and platform charities will use the lists to proactively remove those on the list from their directories. It is critical that such lists as a whole maintain accuracy and data integrity; otherwise, in complying with the statute, charitable fundraising platforms and platform charities risk proactively removing recipient charitable organizations that are either not subject to registration requirements, or that are on the list in error, or that are not on the list but should be. We request that the Amended Legislation include additional protections for charitable fundraising platforms and platform charities that rely on the enumerated lists and in so doing, exclude a recipient charitable organization that was on the list in error, or do not exclude a recipient charitable organization that was not on the list in error (e.g., against potential private or public actions brought against them for including or excluding the recipient charitable organizations in reliance on the list).

Finally, PayPal and PPGF request that any list from the Attorney General’s Registry of Charitable Trusts would be in a format that is machine-readable to enable automation, increasing speed and accuracy of our directories, and reducing the possibility of human error.

Annual Reporting Requirements

Section 12599.9(c)(1) (Amendment 24) requires that the annual report include, in relevant part, "information on recipient charitable organizations or other charitable organizations that received or did not receive donations or grants of recommended donations." As a practical matter, particularly in the case where a check has been issued, PPGF is only in a position to know whether the grant has been made, or a check has been sent, not whether it was received. We would request the Amended Legislation be revised to state, "...information on recipient charitable organizations or other charitable organizations for which donations or grants of recommended donations were made or not made."

Information about Charities for Which Consent Has Not Been Obtained

Section 12599.9(f)(2)(A)/Amendment 39 of the Amended Legislation permits charitable fundraising platforms or platform charities to list only the recipient charitable organization's name, address, employer identification number, corporation or organization number, or registration number with the Attorney General's Registry of Charitable Trusts. We reiterate our earlier comment that such restrictive information would prohibit the provision of potentially helpful publicly available information such as financial information or third-party ratings that would allow donors to make an informed choice and avoid potential confusion. We continue to suggest the following language instead:

(A) The charitable fundraising platform or platform charity **only** lists the recipient charitable organization's name, address information, employer identification number, corporation or organization number, or registration number with the Attorney General's Registry of Charitable Trusts. **Other publicly available information about the recipient organization may be listed so long as the charitable fundraising platform or platform charity cites the source and includes directly proximate links to the cited source.**

We understand from the discussion at the July Stakeholders' Meeting that there is a concern that the inclusion of additional information could lead to the impression that there is a relationship between the charitable fundraising platform or platform charity and the recipient charitable organization. However, there is a benefit to the donor in receiving additional, clarifying information about a recipient charitable organization, as recent examples demonstrate.

The requirement to cite and link to the source of the data, as we have suggested above, would serve to further emphasize that there is not a relationship between the charitable fundraising platform or platform charity and the recipient charitable organization; there would be no need for a charitable fundraising platform or platform charity to cite and link to a third party source of information if the recipient charitable organization had directly provided it, as it would do where a direct relationship exists.

Taking this approach, in combination with the disclosures for charities that have not provided written consent, there would be little room for donor confusion about whether the recipient charitable organization had provided consent to be listed by the charitable fundraising platform or platform charity.

Fees

The amendment to Section 12599.9(f)(2)(C) (Amendment 45) provides that where written consent of a recipient charitable organization has not been obtained, no fees, other than

payment processing fees, should be deducted from funds sent to recipient charitable organizations, but the provision does allow for fees added to the donation or grant. As we have previously stated, this provision should mirror the process for recipient charitable organizations where consent has been obtained, which under Section 12599.9(e)(4), would only require that any fees be disclosed.

We understand the perspective, as articulated at the July Stakeholders' Meeting, that deductions from a donation to a recipient charitable organization that has not provided written consent could be viewed as taking funds due to the recipient charitable organization. This provision, however, will require many existing charitable fundraising platforms and platform charities to restructure their fundraising operations, will limit fundraising models for market participants in the future, and could depress fundraising overall, with no appreciable benefit to recipient charitable organizations, who always have the right to opt out of participation in a charitable fundraising platform.

It is far more beneficial to the recipient charitable organizations to allow public perception and market forces to determine whether the fees are acceptable, rather than statutorily restricting the available fundraising models. We again propose that this provision be removed from the Amended Legislation.

In closing, thank you again for considering AB 2208 in your committee and we respectfully urge the consideration of our suggestions provided above. Please feel free reach out if you would like to discuss further.

Sincerely,

Alicia Kinsey
Senior Legal Counsel
PayPal, Inc.

CC:
The Honorable Jacqui Irwin, Author AB 2208
Members, Senate Judiciary Committee
Amanda Mattson, Consultant, Senate Judiciary Committee
Consultant, Senate Republican Caucus