As amended, Irwin. Charitable organizations: crowdfunding solicitors.

The Supervision of Trustees and Fundraisers for Charitable Purposes Act governs charitable corporations, unincorporated associations, trustees, commercial fundraisers, fundraising counsel, commercial coventurers, and other legal entities holding or soliciting property for charitable purposes over which the state or the Attorney General has enforcement and supervisory powers. Under the act, any person who violates any of the act’s provisions with intent to deceive or defraud any charity or individual is liable for a specified civil penalty. The act also authorizes the Attorney General to impose other specified civil penalties for related acts and omissions. Additionally, the act requires various written reports to be filed with the Attorney General under oath, in accordance with rules and regulations.

The act prohibits specified acts and practices in the planning, conduct, or execution of any solicitation or charitable sales promotion including misrepresenting or misleading anyone in any manner to believe that
another person sponsors, endorses, or approves a charitable solicitation or charitable sales promotion when that person has not given consent in writing to the use of the person’s name for these purposes. The act also prohibits representing that any part of the contributions solicited by a charitable organization will be given or donated to any other charitable organization unless that organization has consented in writing to the use of its name prior to the solicitation.

This bill would create an exception from these specific written consent requirements in certain circumstances for a crowdfunding solicitor for charitable purposes, which the bill would define as a person, whether for profit or not, who engages in charitable crowdfunding solicitation and who is not defined as certain other types of fundraisers or persons, as specified. The bill would require a crowdfunding solicitor for charitable purposes to: (1) obtain the written consent of a charitable organization prior to using its name in a solicitation, except as specified, (2) register with the Attorney General’s Register of Charitable Trusts, (3) file an annual registration and financial report, (4) pay specified registration or renewal fees, and (5) disclose other information required by the Attorney General, under oath, punishable under penalty of perjury. The bill would make it unlawful for a crowdfunding solicitor to solicit funds in this state for charitable purposes unless that crowdfunding solicitor has complied with the registration or annual renewal and financial reporting requirements established by the bill. The bill would make a failure to comply with these provisions grounds for injunctive and other civil relief. The bill would also establish that a crowdfunding solicitor for charitable purposes is a constructive trustee for charitable purposes and is required to account to the Attorney General for all funds. By expanding the crime of perjury, the bill would impose a state-mandated local program.

Existing law requires an individual, corporation, or other legal entity who for compensation solicits funds or property for charitable purposes to disclose that the solicitation is being conducted by a commercial fundraiser for charitable purposes and the name of the commercial fundraiser as registered with the Attorney General.

This bill would also require disclosure if the solicitation is being conducted for profit by a crowdfunding solicitor, including the name of that crowdfunding solicitor as registered with the Attorney General.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.
This bill would provide that no reimbursement is required by this act for a specified reason.


The people of the State of California do enact as follows:

SECTION 1. Section 17510.85 of the Business and Professions Code is amended to read:

17510.85. (a) An individual, corporation, or other legal entity who for compensation solicits funds or other property in this state for charitable purposes shall disclose prior to an oral solicitation or sales solicitation made by direct personal contact, radio, television, telephone, or over the Internet, or at the same time as a written solicitation or sales solicitation:

(1) That if the solicitation or sales solicitation is being conducted by a commercial fundraiser for charitable purposes or the solicitation is being conducted for profit by a crowdfunding solicitor for charitable purposes.

(2) The name of the commercial fundraiser for charitable purposes as registered with the Attorney General pursuant to Section 12599 of the Government Code or the name of the crowdfunding solicitor for charitable purposes as registered pursuant to subdivision (d) of Section 12599.9 of the Government Code, as applicable.

(b) The disclosures required pursuant to this section, if printed or if presented electronically, shall be in at least 12-point type, and shall be clear and conspicuous, as defined in Section 17601.

SECTION 1.

SEC. 2. Section 12599.6 of the Government Code is amended to read:

12599.6. (a) Charitable organizations and commercial fundraisers for charitable purposes shall not misrepresent the purpose of the charitable organization or the nature or purpose or beneficiary of a solicitation. A misrepresentation may be accomplished by words or conduct or failure to disclose a material fact.

(b) A charitable organization must establish and exercise control over its fundraising activities conducted for its benefit, including
approval of all written contracts and agreements, and must ensure
that fundraising activities are conducted without coercion.
(c) A charitable organization shall not enter into any contract
or agreement with, or employ, any commercial fundraiser for
charitable purposes or fundraising counsel for charitable purposes
unless that commercial fundraiser or fundraising counsel is
registered with the Attorney General’s Registry of Charitable
Trusts or, if not registered, agrees to register prior to the
commencement of any solicitation.
(d) A charitable organization shall not enter into any contract
or agreement with, or raise any funds for, any charitable
organization required to be registered pursuant to this act unless
that charitable organization is registered with the Attorney
General’s Registry of Charitable Trusts or, if not registered, agrees
to register prior to the commencement of the solicitation.
(e) Each contribution in the control or custody of a commercial
fundraiser for charitable purposes shall in its entirety and within
five working days of receipt (1) be deposited in an account at a
bank or other federally insured financial institution that is solely
in the name of the charitable organization on whose behalf the
contribution was solicited and over which the charitable
organization has sole control of withdrawals or, (2) be delivered
to the charitable organization in person, by Express Mail, or by
another method of delivery providing for overnight delivery.
(f) Regardless of injury, the following acts and practices are
prohibited in the planning, conduct, or execution of any solicitation
or charitable sales promotion:
(1) Operating in violation of, or failing to comply with, any of
the requirements of this act or regulations or orders of the Attorney
General, or soliciting contributions after registration with the
Attorney General’s Registry of Charitable Trusts has expired or
has been suspended or revoked.
(2) Using any unfair or deceptive acts or practices or engaging
in any fraudulent conduct that creates a likelihood of confusion or
misunderstanding.
(3) Using any name, symbol, emblem, statement, or other
material stating, suggesting, or implying to a reasonable person
that the contribution is to or for the benefit of a particular charitable
organization when that is not the fact.
(4) Misrepresenting or misleading anyone in any manner to believe that the person on whose behalf a solicitation or charitable sales promotion is being conducted is a charitable organization or that the proceeds of the solicitation or charitable sales promotion will be used for charitable purposes when that is not the fact.

(5) Misrepresenting or misleading anyone in any manner to believe that any other person sponsors, endorses, or approves a charitable solicitation or charitable sales promotion when that person has not given consent in writing to the use of the person’s name for these purposes. Written consent is not needed if the requirements of subdivision (c) of Section 12599.9 are met.

(6) Misrepresenting or misleading anyone in any manner to believe that goods or services have endorsement, sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has endorsement, sponsorship, approval, status, or affiliation that the person does not have.

(7) Using or exploiting the fact of registration with the Attorney General’s Registry of Charitable Trusts so as to lead any person to believe that the registration in any manner constitutes an endorsement or approval by the Attorney General. The use of the following statement is not prohibited:

“The official registration and financial information regarding (insert the legal name of the charity as registered with the Registry of Charitable Trusts) can be obtained from the Attorney General’s Web site at http://caag.state.ca.us/charities/. Registration does not imply endorsement.”

(8) Representing directly or by implication that a charitable organization will receive an amount greater than the actual net proceeds reasonably estimated to be retained by the charity for its use.

(9) With respect to solicitations by commercial fundraisers for charitable purposes on behalf of law enforcement personnel, firefighters, or other persons who protect the public safety, issuing, offering, giving, delivering, or distributing any honorary membership cards, courtesy cards, or similar cards, or any stickers, emblems, plates, or other items that could be used for display on a motor vehicle, and that suggest affiliation with, or endorsement
by any public safety personnel or a group comprising such personnel.

(10) (A) Soliciting for advertising to appear in a for-profit publication that relates to, purports to relate to, or that could reasonably be construed to relate to, any charitable purpose without making the following disclosures at the time of solicitation:
   (i) The publication is a for-profit, commercial enterprise.
   (ii) The true name of the solicitor and the fact that the solicitor is a professional solicitor.
   (iii) The publication is not affiliated with or sponsored by any charitable organization.

(B) Where a sale of advertising has been made, the solicitor, prior to accepting any money for the sale, shall make to the purchaser the disclosures required by subparagraph (A) in written form and in conspicuous type.

(11) Representing that any part of the contributions solicited by a charitable organization will be given or donated to any other charitable organization unless that organization has consented in writing to the use of its name prior to the solicitation. The written consent shall be signed by one authorized officer, director, or trustee of the charitable organization. Written consent is not needed if the requirements of subdivision (c) of Section 12599.9 are met.

(12) Representing that tickets to events will be donated for use by another, unless all of the following requirements have been met:
   (A) The charitable organization or commercial fundraiser has commitments, in writing, from charitable organizations stating that they will accept donated tickets and specifying the number of tickets they are willing to accept.
   (B) The donated tickets will not, when combined with other ticket donations, exceed either of the following:
      (i) The number of ticket commitments the charitable organization or commercial fundraiser has received from charitable organizations.
      (ii) The total attendance capacity of the site of the event.

(g) A person shall not knowingly submit for filing on behalf of any charitable organization any statement, report, financial statement, attachment, or other information to be filed with the Attorney General that contains information, a statement, or an omission that is false or misleading.
(h) A ticket commitment from a charitable organization alone, as described in clause (i) of subparagraph (B) of paragraph (12) of subdivision (f), does not constitute written consent to use of the organization’s name in the solicitation campaign.

SEC. 2.

SEC. 3. Section 12599.9 is added to the Government Code, to read:

12599.9. (a) “Charitable crowdfunding solicitation” means the practice of raising contributions from a large number of people for charitable purposes through means of the Internet.

(b) “Crowdfunding solicitor for charitable purposes” means a person, whether or not for profit, who engages in charitable crowdfunding solicitation, and who is not defined as a commercial fundraiser for charitable purposes, a fundraising counsel for charitable purposes, or a commercial coventurer.

(c) A crowdfunding solicitor for charitable purposes shall obtain the written consent of a charitable organization prior to using its name in a solicitation. The written consent shall be signed by one authorized officer, director, or trustee of the charitable organization. Written consent is not needed if all of the following requirements are met: (1) the crowdfunding solicitor for charitable purposes provides only a database or list of charitable organizations that may receive contributions; (2) the solicitation only lists the charitable organization’s name and other public information provided by the charitable organization to the Internal Revenue Service, the Attorney General’s Registry of Charitable Trusts, or other federal or state government agencies; (3) the crowdfunding solicitor for charitable purposes excludes charitable organizations that are not in good standing with the Internal Revenue Service, and where applicable, the Franchise Tax Board or the Attorney General’s Registry of Charitable Trusts; (4) the crowdfunding solicitor for charitable purposes conspicuously discloses the charitable organization can request removal from the database or list, which shall be implemented within five days of a request; (5) the crowdfunding solicitor for charitable purposes conspicuously discloses that the charitable organization has not provided consent for the solicitation; (6) the crowdfunding solicitor for charitable purposes conspicuously discloses that the charitable organization may not receive the contribution and if so, that the contribution may be provided to a charitable organization with a similar
charitable purpose unless the donor specifies an alternative organization; (7) the crowdfunding solicitor for charitable purposes shall provide to the charitable organization the contribution and an accounting of any fees imposed for processing the contribution within __ days of its receipt of the contribution; and (8) if the charitable organization requests donor name or contact information, the crowdfunding solicitor for charitable purposes shall provide such information for donors who consented to share their information, without imposing any fees or requiring the charitable organization to provide consent for other solicitation. For purposes of this section, good standing means the charitable organization’s tax-exempt status has not been revoked by the Internal Revenue Service or the Franchise Tax Board, and the organization is registered and current in its required reportings with the Attorney General’s Registry of Charitable Trusts. For purposes of this section, “conspicuously” has the same meaning as in Section 17601 of the Business and Professions Code.

(d) A for-profit crowdfunding solicitor for charitable purposes shall, prior to performing a charitable crowdfunding solicitation in California, or prior to receiving and controlling any funds, assets, or property, as a result of a charitable crowdfunding solicitation in this state, register with the Attorney General’s Registry of Charitable Trusts on a registration form provided by the Attorney General. Renewals of registration shall be filed with the Registry of Charitable Trusts by January 15 of each calendar year in which the crowdfunding solicitor for charitable purposes does business and shall be effective for one year. The Attorney General shall collect a registration or renewal fee, not to exceed the reasonable administrative costs to the Attorney General, from each registrant at the time of registration or upon renewal. The Attorney General may adjust the annual registration or renewal fee, or means of payments, as needed, so long as the fee does not exceed the reasonable administrative costs to the Attorney General for its duties pursuant to this section. The Attorney General’s Registry of Charitable Trusts may grant extensions of time to file annual registration as required, pursuant to subdivision (b) of Section 12586.

(e) A crowdfunding solicitor for charitable purposes shall file an annual report on a form provided by the Attorney General, accounting for all funds collected from charitable crowdfunding
solicitations during the preceding calendar year. The annual financial report shall be filed with the Attorney General’s Registry of Charitable Trusts no later than 30 days after the close of the preceding year.

(f) The contents of the forms for annual registration and annual financial reporting by crowdfunding solicitors for charitable purposes shall be established by the Attorney General in a manner consistent with the procedures set forth in subdivisions (a) and (b) of Section 12586. The annual financial report shall require a detailed, itemized accounting of funds, assets, or property, of charitable crowdfunding solicitations for each charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or for each charitable purpose during the accounting period, and shall include, among other data, the following information for funds, assets, or property, solicited by the crowdfunding solicitor for charitable purposes:

1. Total revenue.
2. The fee or commission charged by the crowdfunding solicitor for charitable purposes.
3. Salaries paid by the crowdfunding solicitor for charitable purposes to its officers and employees.
4. Fundraising expenses.
5. Distributions to the identified charitable organization or purpose.

(g) It shall be unlawful for any crowdfunding solicitor for charitable purposes to solicit funds in this state for charitable purposes unless the crowdfunding solicitor for charitable purposes has complied with the registration or annual renewal and financial reporting requirements of this article. Failure to comply with these registration or annual renewal and financial reporting requirements shall be grounds for injunction against solicitation in this state for charitable purposes and other civil remedies provided by law.

(h) A crowdfunding solicitor for charitable purposes is a constructive trustee for charitable purposes as to all funds collected pursuant to solicitation for charitable purposes and shall account to the Attorney General for all funds. A crowdfunding solicitor for charitable purposes is subject to the Attorney General’s supervision and enforcement over charitable funds and assets to the same extent as a trustee for charitable purposes under this article.
SEC. 3.  No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution because
the only costs that may be incurred by a local agency or school
district will be incurred because this act creates a new crime or
infraction, eliminates a crime or infraction, or changes the penalty
for a crime or infraction, within the meaning of Section 17556 of
the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California
Constitution.