

2024 ANA/BAA MASTERS OF LAW  
CAUSE MARKETING

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## I. Legal and Regulatory Framework

### A. Legal rules

More than 40 states have charitable solicitation laws.

They generally define and regulate “commercial co-venturers,” “fundraising counsel,” “professional fund-raisers/paid solicitors,” “solicitations” and “contributions” (the terminology varies from state to state, but these labels are the ones used most often).

At the end of these materials are tables of relevant state laws. The following is a summary of key provisions of the typical statute. The table and this outline offer only a summary and should not be relied upon for legal guidance on a specific promotion. Consult counsel for legal advice or clearance for particular promotions.

#### 1. Commercial co-venturer

- a. Defined: Generally, a commercial co-venturer is a person regularly and primarily engaged in commerce (other than in connection with raising funds for charities) who conducts a “charitable sales promotion.” Approximately twenty states regulate commercial co-venture promotions.

A “charitable sales promotion” is an advertising or sales campaign, conducted by a charitable co-venturer, which represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit a charitable organization or purpose.

Note, however, that definitions vary from state to state. For example, Massachusetts includes in its definition of a commercial co-venturer any person who promotes the sale of any good or service which is advertised in conjunction with the name of any charity.

- b. Legal requirements: Generally,
  - i. There must be a written contract between the charitable organization and the commercial co-venturer.

- ii. The charitable organization must file a copy of the contract prior to the charitable sales promotion (Note: the charity, not the commercial co-venturer, frequently must file the contract).
- iii. Typically, no registration and no bonding are required of the commercial co-venturer. There are some exceptions (Alabama, Hawaii, Illinois, Massachusetts, Mississippi & South Carolina; California if either (a) no contract is in place with the charity, or (b) as of 1/1/2023, the charitable sales promotion activity is online for the benefit of more than 6 charities in any one calendar year).
- iv. The commercial co-venturer must keep a copy of its final accounting.
- v. Sometimes the state requires that certain provisions be included in the contract (*e.g.*, Connecticut requires the contract to describe the goods or services to be offered to the public, the geographic area of the promotion, the beginning and ending dates, the manner in which the charitable organization's name will be used, provisions for final accounting by the commercial co-venturer, and the date and manner in which the charitable organization will receive its benefit).
- vi. Some states require disclosures in advertising.

About a dozen states require ads to disclose the expected portion of the sales price, percentage of gross proceeds, or other consideration the charity is to receive. Many states require this disclosure on a per-unit basis – for example, “\$1.00 per box” or “5% of the purchase price.”

Massachusetts requires the same, plus disclosure of the name, address and telephone number of the charity (or the co-venturer if no specific charity is involved); a description of how the sums raised will be used; and a statement that the effort is being conducted by a “paid fund-raiser.”

In 2012 New York issued a set of “Best Practices” guidelines with recommended approaches for many common situations, including where a maximum or minimum amount applies and how to help avoid misleading consumers as to whether their purchases (or other invited actions) are likely to count in various circumstances. [https://www.charitiesnys.com/cause\\_marketing.html](https://www.charitiesnys.com/cause_marketing.html)

- c. Scope: If a charitable solicitation law is going to apply to a cause-related promotion, it will most often be through the provisions governing commercial co-venturers. States that do not have commercial co-venturer laws may try to reach cause-related promotions through other stricter provisions regulating “fundraising counsel,” or “professional fund-raisers.” Illinois, for example, uses its “Charitable Trusts” Law to regulate commercial co-venturers. As of 1/1/2023, California will require registration as a “charitable fundraising platform” where a merchant conducts charitable sales promotions online (in whole or in part) for the benefit of more than six charities in any one calendar year. Whether a state can effectively apply an alternate set of laws depends on the language of its statute and the structure of the promotion in question. Generally, it would appear difficult to stretch “professional fundraiser” laws to cover most ordinary commercial co-venture offers, but “trustee”-style laws are easier for a state to apply if the regulators in that state wish to do so.

2. Professional fund-raiser/paid solicitor

- a. Defined: Generally, a person (other than a regular employee of a charitable organization) who for compensation or other consideration solicits contributions for a charitable organization, or who employs someone else to solicit contributions for compensation. More than 40 states regulate professional fund-raisers and/or paid solicitors.
- b. Legal requirements: Generally, a professional fund-raiser or paid solicitor must register annually, post a bond, submit a copy of a written contract with the charitable organization prior to any campaign (along with campaign information and copies of campaign literature), maintain financial information, and file reports with the state.
- c. Disclosures: Some states require disclosures prior to, or as part of, any solicitation (including ads, which often constitute “solicitations”, and which may include commercial co-venture ads). Florida, for example, requires professional solicitors to disclose their corporate name, the legal name of the individual actually making the solicitation, the name and state of the principal place of business of the charity, a description of how the proceeds will be used, a statement that a copy of the official registration and financial information of the charity may be obtained by calling a toll-free number, the percentage of the gross that the charity will receive (this particular disclosure requirement is probably unconstitutional under *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988)), the amount that can be deducted from taxes as a charitable contribution, and other disclosures.

3. Fundraising counsel

- a. Defined: Generally, a person, who, for compensation, manages, advises or consults with respect to the solicitation of contributions by a charitable organization. Approximately forty states regulate fundraising counsel.
  - i. Does not include a paid solicitor/professional fundraiser and does not include a regular employee of a charitable organization.
  - ii. Definition doesn't vary much from state to state.
- b. Legal requirements: Generally, fundraising counsel must have a written contract with the charity, file the contract prior to performing material services, annual) register and (sometimes) post a bond, and account in writing to the charity for income and expenses after a campaign.

4. Online Charitable Fundraising Platform

This category of regulation was created in California in 2021 (AB 488) and codified under Gov. Code 12599.9. It covers a wide variety of types of charitable fundraising activity when conducted online. See further discussion in Part V.C. below.

5. Solicitation

- a. Defined: Usually very broadly. Connecticut is typical:

“[A]ny request directly or indirectly for money, credit, property, financial assistance or other thing of any kind or value on the plea or representation that such money, credit, property, financial assistance or other thing of any kind or value is to be used for a charitable purpose or to benefit a charitable organization.”
- b. Sometimes, the statutes identify specific examples of solicitation. Connecticut again:

“**“Solicit”** and **“solicitation”** shall include, but shall not be limited to, the following methods of requesting or securing such money, credit, property, financial assistance or other thing of value: (A) Any oral or written request; (B) any announcement to the press, over the radio or television or by telephone or telegraph concerning an appeal or campaign by or for any charitable organization or purpose; (C) the distribution, circulation, posting or publishing of any handbill, written advertisement, or other publication; (D) ***the sale of, offer or attempt to sell, any advertisement, advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies or other tangible item in***

**connection with an appeal made for any charitable organization or purpose, or where the name of any charitable organization is used or referred to in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale is to be used for any charitable purpose or benefit any charitable organization.** A solicitation shall be deemed to have taken place whether or not the person making the same receives any contribution.”

6. Charity Registration

- a. The definition of “solicitation” is broad enough in many states to encompass commercial co-venture offers. As a result, when a commercial co-venturer makes a nationwide offer to consumers, many states could argue that “solicitations” are being made to their citizens on the charity’s behalf, and, therefore, that the charity is required to register with the state even though the charity may have no contact with the state other than the circulation of the co-venture offer in the stream of interstate commerce. There is no clear precedent insulating the charity from the potential duty to register in multiple states. *Cf. American Target Advertising, Inc. v. Giani*, 199 F.3d 1241, 1254-1255 (10th Cir. 2000) (registration duty for out-of-state professional fundraiser held not to violate the Commerce Clause).
- b. As a practical matter, unless the charity falls within a generally exempt category (e.g., religious institutions and accredited educational institutions) or is already registered nationwide (many large charities routinely register in all states to cover their regular fund-raising activities), the charity should be prepared to register in *at least* those states where the co-venturer must register, and possibly more. A co-venturer should discuss these issues with the charity in advance to avoid surprises and to develop a strategy regarding registration.
- c. If a corporation uses its own foundation as the benefiting charity (which is usually fine to do), the foundation may then need to register nationwide. Be sure to consider this cost in your planning.

B. Other “regulations” and standards

1. Better Business Bureau
  - a. Promulgates voluntary standards to promote ethical practices.
  - b. Standards require charities to ensure that solicitations in conjunction with the sale of goods, services or admissions identify at the point of solicitation (a) the benefiting organization, (b) a source from which written information is available and (c) the

actual or anticipated portion of the sales or admission price to benefit the charitable organization or cause.

2. TV networks

Have no formal standards for advertising of cause-related promotions. But they do pay attention. For example, ABC requires beginning and end dates of promotion, name of organization to be benefited, and amount of benefit to be given.

C. Proposed Multistate Consumer Law Guidance Principles

In 1999, the Attorneys General in 16 states plus the District of Columbia proposed six Guidelines. The proposals were made in response to perceived abuse of charity names in advertisements for commercial products. The Guidelines do not have the force of law. They reflect a set of principles to guide the analysis whether a particular promotion. The Guidelines are:

1. Both the corporate sponsor and the nonprofit organization engaged in advertising a commercial product must satisfy all applicable legal standards, including consumer laws prohibiting false advertising, unfair and/or deceptive trade practices and consumer fraud.
2. Advertisements for commercial products must not misrepresent that a nonprofit organization has endorsed the advertised product. If such an advertisement uses a nonprofit organization's name and logo, and the nonprofit has not in fact endorsed the advertised product, the advertisement must clearly and conspicuously disclose that the nonprofit organization has not endorsed or recommended the product.
3. Advertisements for commercial products using the name or logo of a nonprofit must avoid making express or implied claims that the advertised product is superior, unless the claim is true and substantiated, and the nonprofit has determined the advertised product to be superior. If the nonprofit has not determined the advertised product to be superior, such advertisement must clearly and conspicuously disclose that fact.
4. Advertisements for commercial products using a nonprofit's name and logo shall disclose clearly and conspicuously that the commercial sponsor has paid for the use of the nonprofit's name and logo.
5. Advertisements arising from a corporate-nonprofit arrangement shall not mislead, deceive or confuse the public about the effect of consumers' purchasing decisions on charitable contributions by the consumer or the commercial sponsor.
6. Nonprofits should avoid entering into exclusive relationships with commercial sponsors for the marketing of commercial products. In the case where an exclusive arrangement does exist, product advertising using a nonprofits' name or logo shall clearly and conspicuously disclose,

if that is the case, that the relationship between the commercial sponsor and the nonprofit is exclusive in nature.

## II. How the Laws Apply (Examples)

### A. Example 1: Direct mail coupon program

1. Packaged-goods company approaches charity directly and offers to distribute coupons, or a coupon book, featuring the manufacturer's brands and the charity. Manufacturer's program might include one or more of the following:
  - a. A simple statement that the manufacturer is "a proud sponsor" of the charity or is making its own donation to the charity.
  - b. Encouragement in the direct mailings for consumers to support the charity.
  - c. Inclusion of a membership form so consumers can become members of the charitable organization.
  - d. A flat fee to license use of the charity's name and logo in the campaign.
  - e. A promise to the charity and consumers that it will donate five cents to the charity for every coupon redeemed.
2. Is the manufacturer a "commercial co-venturer"?
  - a. Usually not for simple encouragement of consumer support for the charity, inclusion of a membership form, or merely advertising that it has made a donation.
  - b. But a promise to consumers that their purchases will benefit the charity would make the manufacturer a commercial co-venturer in states with applicable laws.
3. Is the manufacturer a "paid solicitor"?
  - a. Probably not – states that regulate commercial co-venturers generally would use those statutes, not the ones governing paid solicitors.
  - b. What about other states?
    - i. By encouraging consumers to support the charity, or telling consumers that purchases will benefit the charity, the manufacturer may be "soliciting" "contributions."
    - ii. But is the manufacturer acting for "compensation"? Not in the ordinary sense. Nevertheless, some state officials have said unofficially that they may regard the additional



goodwill and/or sales of products generated by such a promotion as “compensation,” entitling the state to regulate marketers in this situation. Note that some state laws (e.g. Michigan, Tennessee, Washington and West Virginia) include parties who act for compensation “*or other consideration,*” which gives regulators more latitude.

- iii. Could be different if manufacturer said “donate to the charity by buying our product” - that seems more like a direct solicitation.

4. Is the manufacturer a “fundraising counsel”?

Unlikely in this situation. No advice, etc. to charity; all activity undertaken by manufacturer based on its own plan.

5. What is the Impact of the Multistate Guidelines?

- a. Unclear. The Guidelines are intended primarily to help prevent misleading suggestions that the *charity* is endorsing the commercial party. Depending upon the facts, and the exact wording of the ads, the results could vary.
- b. If the manufacturer merely says it is “a proud sponsor,” or merely announces a gift *it* has made to the charity, there is relatively little risk. These statements probably are constitutionally protected free speech, and they don't suggest sponsorship *by the charity*.
- c. Use of a charity logo for a fee may, in some circumstances, trigger Guidelines 2, 4, and 6 — *i.e.*, the manufacturer may need to disclose that the charity has not endorsed the product, that the sponsor paid to use the charity's name, or that the relationship is exclusive. The risk is greatest where the charity and the manufacturer are in related fields — for example, a pharmaceutical company and the AMA. In such a case, the unexplained presence of the charity's name or logo may suggest endorsement (think about the American Dental Association's seal of approval on Crest toothpaste). In contrast, an automobile manufacturer's reference to its own donations to a children's hospital is unlikely to suggest sponsorship or endorsement *by the hospital* of the manufacturer.
- d. Accurate disclosure of the effect of each consumer's purchase on the amount going to a charity is already required under many states' commercial co-venture laws. The Guidelines may extend this requirement to additional states. In particular, many states have expressed concern about commercial co-venture offers where the total contribution is capped and the consumer has no way to know whether the cap has already been reached. For this reason, caps are disfavored. If they are used, the sponsor either should have an effective means to communicate when the cap is

reached, or should limit the promotion in terms of time or number of specially marked units of product to keep assure that substantially all units of product offered as part of the promotion will count as part of the promotion.

- B. Example 2: Co-op program involving a charity, a promotional agency, and manufacturers.
1. Promotion agency approaches charity and offers to assemble a promotion package focused on the charity's annual telethon.
    - a. How the money flows: Charity will pay agency's costs. Agency earns nothing unless manufacturers sign up, in which case agency is paid and keeps 20% of all amounts received by the charity through the promotion. Manufacturers pay charity a flat fee to participate, plus extra amounts for any special recognition they select.
    - b. Manufacturers' participation: Agency offers manufacturers a package including use of charity's name and logo, opportunity to participate in a coupon event, a sweepstakes offered in-store and/or in an FSI, signage and credit during the telethon, and the opportunities for special recognition during the telethon (through special awards and events).
  2. Who is regulated here? Any difference from Example 1?
    - a. Manufacturers. Depending on what they say in their ads, they could be treated as commercial co-venturers, just as in Example 1.
    - b. Agency as "Solicitor." The agency has played several roles which could subject it to different forms of regulation. For example, the agency has offered manufacturers and the coupon distributor a chance to participate in the program. The manufacturers and distributors pay money to the charity to participate. The agency is paid 20% of the amounts received by the charity. Is it therefore a "paid solicitor" (*i.e.*, someone who for compensation solicits contributions)?
      - i. Unlikely, but not entirely clear: The agency can argue it is promoting a commercial venture (marketing and licensing rights for money), not soliciting charitable "contributions." But the way the agency constructs its marketing effort could influence the result: emphasis on commercial benefit to participating brands (rather than **donative** intent of participating brand or contributory benefit to charity) would help. See *Attorney General v. International Marathons, Inc.*, 392 Mass. 370, 467 N.E. 2d. 51 (1984) (agency not a paid solicitor).

- ii. Agency also probably is not a “paid solicitor” if it conceived this plan while working for and being paid by the manufacturer, rather than the charity.
    - c. Agency as Fundraising Counsel? The Agency initially offered the promotion idea and agreed to put it in place for compensation – is the agency a fundraising counsel?
      - i. Unclear. Normally, fundraising counsel is only someone who advises or consults with respect to the solicitation of charitable contributions *by the charitable organization*.
      - ii. In Example 2, the charity itself solicited only in the telethon. Therefore, agency shouldn't be deemed a fundraising counsel, except possibly to the extent it advised the charity with respect to how to conduct the telethon, rather than how to obtain sponsors for the telethon.
      - iii. Different result if charity went out itself to sign up manufacturers? If agency worked primarily for the charity? If the primary pitch to the manufacturers focused on donations rather than business opportunities?
- C. Example 3: Website telling the consumer that, every time he or she makes a purchase from a participating merchant through the website, a designated percentage of the purchase price (say 10%) will be credited to an account in the consumer's name. The consumer can then elect to receive that amount as a cash refund, or apply it to future purchases, or instruct the web site to donate it to any charity designated by the consumer.
- 1. Commercial Co-Venturer? The basic offer to the public – Buy a product and a charity will benefit – certainly sounds like a co-venture offer. But the web site is not paying its own money to the charities; it is inviting consumers to make direct donations to the charity.
  - 2. Professional Solicitor/Fundraising Counsel? This is not a traditional arrangement where a charity pays a fee to a solicitor. But the web site appears to be a commercial party that is asking people to make donations. It also holds the money “in trust” until the consumer directs a contribution to be made. The “compensation” to the website may not be obvious, but it might come from participating merchants paying a commission on each transaction. Ad revenues from site traffic may also be relevant. Either way, the web site operator is making money (or trying to) from an activity that focuses on encouraging (and facilitating) donations. Expect to see states starting to apply their “solicitor” or “fund-raising counsel” laws to some of these sites, especially where the website operator holds the money prior to making any donations.

- D. Example 4: Manufacturer advertises that all profits, after taxes, from sale of all its products will be donated to charity. No time limit on offer. No specification of charity.
1. Co-Venture? Maybe. But if company always gives *all* profits to charity, is it “regularly engaged in commerce other than raising funds for charities”?
  2. Professional Fund-Raiser? Maybe. At least if you subscribe to the theory that increased goodwill = compensation.
  3. Charity? Maybe. In some ways this is the most logical category. It's also the most heavily regulated. Watch for developments in this direction if states suspect that the company is not acting properly.
- E. Example 5: Manufacturer helps organize and advertise a “benefit” concert saying “all proceeds will benefit” a named charity. The event is held in a local arena. Tickets are purchased through the arena's box office.
1. Co-Venture? Maybe. But manufacturer more likely is just a volunteer, unless it actually handles the money in which case there is a greater risk of being deemed a co-venturer.
  2. Arena. Probably just a vendor supplying its services for normal compensation.
- F. Example 6: Retailer invites consumers to make donations to charity at checkout counter. What result? Is retailer compensated? If not, the risks probably are low.
- But**, handling charitable donations from consumers is an invitation to regulators to pay attention. For example, Illinois could apply its “charitable trust” law (anyone who holds money for the benefit of a charity) as it does to traditional co-venturers. Similarly, Massachusetts authorities have been reported to have taken the position that a non-compensated retailer may be deemed a co-venturer (and therefore subject to registration and bonding) if the retailer has custody of consumer contributions before turning them over to the charity. Additional states could apply “professional solicitor” laws if they were to take an expansive view of increased “goodwill” as constituting a form of compensation to the retailer. See part V.C below on the California law, effective 1/1/2023, that will require registration for online donation-at-checkout offers under the “charitable fundraising platform” law, as well as potential requirements for instore programs under the existing charitable “trustee” law.
- G. Example 7: Sponsor invites consumers to take some totally free action, such as “voting” on a website, with a promise to make a donation for each consumer visit/action. Do the CCV laws apply? Read expansively, at least some laws could theoretically apply because a representation is made that the “use” of a “service” offered by the sponsor will benefit a charity. As a matter of enforcement policy, however, many states likely don't place priority on situations where the consumer pays no money at all – either for a purchase or a donation. Also, if the consumer action is simply to “vote” where the sponsor should allocate a pre-determined aggregate donation, there is an additional defense that the consumer

action does not *generate* the donation but instead simply helps advise the sponsor where to allocate a pre-determined donation.

### III. The Charity's Perspective

Cause-marketing programs can take many forms, including the following:

- Sponsorships
- Licensing
- Coupon and Product Tie-ins
- Affinity Programs
- Seals of Approval
- Commercial Co-Venture Sales
- Cooperative Marketing Efforts
- Direct Solicitation of Donations

All forms share two basic elements: money flowing to a charity, plus use of the charity's name in connection with a commercial company's goods or services. Seemingly small changes in form can have large effects on the charity. In this section we look at some of the options a charity might consider and the consequences of choosing those options.

#### A. Licensing Use of Charity's Name

A "license fee" is a common way to characterize the payment from a co-venturer to a charity. This characterization is consistent with the facts of the underlying deal: the business pays the charity for the right to use the charity's name. The payment might also be characterized as a "donation," but the fact that it is made in the context of a contract between the parties suggests that the "license fee" characterization makes as much sense as the "donation" characterization, especially if there are any duties on the charity which might be deemed inconsistent with an outright "donation" or where the context of the transaction is clearly commercial.

##### 1. Simple Licensing of Name/Logo

The classic example is a credit card affinity program where the charity's name appears on the card and a percentage of all purchase amounts gets donated to the named charity.

- a. "Active" vs. "Passive". A licensing deal involving the charity's name/logo will not jeopardize the charity's tax-exempt status, and the license fees generally will not be deemed taxable income to the charity, so long as the charity's role is "passive" as a licensor rather than "active" as an agent or promoter rendering services in support of the commercial company's marketing efforts. See Rev. Rul. 81-178, 1981-2 C.B. 135, and Rev. Rul. 69-430 1969 C.B. 129.

- b. UBIT. If the charity takes on contractual duties to distribute promotional materials as part of a licensing deal or otherwise actively helps promote or market the commercial company's products or services, then any amounts paid to the charity in connection with such "active" services may be deemed "unrelated business income" (*i.e.*, unrelated to the charity's non-profit mission) and subject to the unrelated business income tax (UBIT). Passive "royalty" income (with no services) is generally exempt from UBIT. Rev. Rul. 81-178. While not fatal, most charities do not like to incur UBIT if it can be avoided.

## 2. Addition of "Approval" Message from Charity

What if the charity goes beyond simply allowing its name/logo to be used by a commercial party in a licensing deal and also allows the commercial party to display on its products an "approval" message, a favorable review, or some other positive statement from the charity?

- a. If it's a very simple statement of "approval" of the product or acknowledging the support of the sponsor, it probably shouldn't trigger UBIT. (NOTE: depending on the type of product and charity – medical device and medical organization, for example – "approval" might be inferred by many consumers anyway from the mere presence of the charity's name or logo without any other statement.)
- b. How far beyond a simple statement of approval can the charity go? It's unclear. The more that is said, the greater the risk that the charity might be deemed to be rendering a taxable advertising service to the commercial party. See next section discussing the IRS rules on "Sponsorship Benefits."

## 3. Self-Dealing

Some transactions between a private foundation and a "disqualified person" can be subject to tax. The definition of a "disqualified person" includes any grantor of over 2% of the foundation's income, plus parties closely related to such a grantor, for example major shareholders (and their family members), controlled subsidiaries, and foundation officers and directors. A corporation that forms a foundation is almost always a "disqualified person" for its own foundation.

- a. The basic worry in self-dealing is when value or money flows from the foundation to the disqualified person. There is much less concern when the value or money flows in the other direction (though it can sometimes be an issue).
- b. In a standard charitable sales promotion, the foundation licenses the use of its name to the commercial party, and the commercial party pays a fee in the form of the "donation" (*e.g.*, "\$1.00 for every box of cereal purchased.). Is there a problem? Maybe.

The foundation is giving the commercial party the right to use the foundation's name, which clearly has some value. But there is an exemption in the law for furnishing of goods, services or facilities to a disqualified person on the same terms available to the general public. While this exemption normally applies to parks, museums or other similar services offered to the general public, the rationale for the exemption would support a finding of no self-dealing where the license terms are fair, reasonable, and comparable to the terms the foundation would offer to any other sponsor to conduct a similar promotion. Approval of the deal by independent board members is another precaution that can help reduce risks.

B. IRS "Sponsorship Benefits" Regulations

The IRS has issued a set of rules governing the forms of benefits that charities can provide to "sponsors" while still allowing both parties to characterize the sponsorship money as a "donation" and without triggering UBIT. The rules focus primarily on the kinds of signage and other exposure that the charity can provide the sponsor in connection with an event or other public activity. Examples of the types of charity-run events and activities addressed in the rules include college football bowl games, major museum exhibitions, symphony orchestra concerts, public radio broadcasts, walkathons, etc. See Treas. Reg. 1.513-4.

- a. "Acknowledgment" vs. "Advertising". The purpose of the rules is to distinguish between appropriate forms of "acknowledgment" of the sponsor's support and inappropriate forms of "advertising" for the sponsor that are so commercial in nature that they (a) do not qualify as "donations," and (b) may possibly also be subject to UBIT (unless they are exempt under some other provision of the tax laws, such as the "passive royalty" exemption). The distinction is different from the "active vs. passive" test above, because the charitable organization must take some active steps to provide acknowledgment for the sponsor's support. The inquiry focuses on the nature of the statements that are being made and whether they cross the line from being mere "acknowledgments" of support and become instead forms of "advertising."
- b. The line between "acknowledgement" and "advertising" is not always clear. The following kinds of statements would be risky and would have to be reviewed carefully before they were made:
  - i. Comparative advertising claims
  - ii. Quality or claims about the product
  - iii. Affirmative "endorsement" of the product
  - iv. Active encouragement to buy the product
  - v. Price claims

- c. How about if the charity mentions on its web site the fact that it is making a donation with each purchase of a designated product? Is that an “acknowledgment?” Is it an “inducement” to buy the product? It's not clear. The exact wording and context may affect how such a statement is viewed.
- d. Special care must be taken when mentioning a sponsor in a “periodical.” The sponsorship benefit regulations do not apply. Almost any form of recognition can be deemed “advertising.”
- e. A charity also should monitor the messages a sponsor may post on the charity's Facebook or other social media pages. An overtly commercial message tacitly tolerated (or expressly encouraged) could tempt the IRS to find UBIT.

2. Other Activities by the Charity

In general, the more the charity does, the more likely UBIT may apply. Therefore, it is important for a charity to review any sponsorship deal very carefully and try to (a) minimize the amount of activity it is obligated to undertake for the benefit of the business, and (b) in the case of sponsorship benefits make sure they take the form of permissible “acknowledgments” rather than taxable “advertising” (or that they fit into some other UBIT exemption). The examples set forth in Treasury Regulation 1.513-4 are a good place to start for general guidance.

C. Charity Distributes/Sells Product

Sometimes the parties want the charity to distribute or sell a special product. This situation can raise many potential complications for both parties as follows:

- 1. UBIT. If the product is not sufficiently related to the charity's mission, the charity's sales will be subject to UBIT. The question is how to determine what is sufficiently related. Sales of art reproductions by an art museum are generally OK, as are science kits by a science education organization, and music-decorated clothing items by a symphony orchestra. But sales of general merchandise by any of these organizations could trigger UBIT – for example, calendars at the museum with illustrations unrelated to art, toys from the science group that are not “scientific,” or neckties from the symphony that don't have musical-motif decorations.
- 2. Even if the product is sufficiently related to the charity's purpose to avoid UBIT, one has to look at the transactions between the commercial party and the charity to determine what role the commercial party is playing. If the goods are donated to the charity, there is no problem. If the goods are sold to the charity, then there is a question whether the commercial party may be acting as a professional fundraiser or fundraising counsel. NOTE: Anytime money flows from the charity to the commercial party, you should review the situation carefully and try to avoid such payments unless the commercial party is simply acting in its normal capacity as a



vendor of its regular products in the ordinary course of business and not benefiting from any special advertising of the arrangement.

D. Special Product Created by Charity

What if the commercial party commissions the charity to produce a special item – for example, an educational toy or workbook for children – for distribution to the public?

1. If the charity is paid for the work, then you have to determine whether the income is subject to UBIT – *i.e.*, was the project sufficiently related to the charity's main purpose to qualify as tax-exempt income? (A one-time project is relatively unlikely to trigger UBIT problems; repeated transactions are riskier.) A safer approach would be to position the money as a grant to the charity for the purpose of creating the special item, again making sure that the item is related to charity's mission.
2. If the commercial party wants to distribute the items to the public, it should either buy them from the charity (yes, that means paying for the items a second time), or make clear in the contract that its distribution efforts will be as a volunteer to assist the charity in the mission of bringing the items to a wider audience. The commercial party should not be paid anything for the distribution.
3. There generally is no problem having the charity distribute items it has created, but be careful if the items include any promotional information about the commercial sponsor. If they do, then the contract should not impose any affirmative distribution obligations on the charity; affirmative duties might be viewed as marketing efforts on behalf of the business partner that could trigger UBIT. Moreover, the “promotional” information should be limited to a “proud sponsor” message and avoid overt sales messages; otherwise, the whole project could be subject to UBIT as a form of “advertising” for the commercial party under the “sponsorship benefit” rules discussed in Part III. B. above.

**IV. Enforcement: How have these laws been enforced?**

- A. Misrepresentation is the primary target in most states — *i.e.*, false ads where funds do not in fact go to charity.
- B. In 2018, a charity entered into a settlement agreement with 16 state agencies following allegations of misrepresentations and inappropriate actions related to a commercial co-venture promotion. The commercial co-venturer advertised that the sale of a teddy bear would trigger a donation for the purpose of sending care packages to service members. The charity did not request an accounting of the promotion, or provide information to the commercial co-venturer regarding how the funds were used. The allegations against the charity included: (i) failing to oversee its commercial co-venturer (and advertisements for the promotion), (ii) failing to maintain the funds as restricted funds, (iii) using the funds in a manner other than as represented, (iv) using funds for non-charitable purposes, and (v) engaging in unfair, false, misleading, or deceptive solicitation and business

practices. The charity wound down its operations, the chief executive was barred from serving as a fiduciary or soliciting for any charity, and civil penalties were assessed. This settlement highlights the need for charities to seek written contracts, collaborate with commercial co-venturers on advertisements, request written accountings, and adhere to any restrictions placed on funds. *State of Tennessee v. Operation Troop Aid, Inc.*, [https://ag.ny.gov/sites/default/files/ota\\_agreement.pdf](https://ag.ny.gov/sites/default/files/ota_agreement.pdf)

- C. Maximum Donation: In 1999 the Georgia Attorney General's office investigated a General Mills promotion for Yoplait yogurt. The manufacturer had promised on the outside of specially marked Yoplait lids to donate 50¢ for each returned lid. A statement under the lid said the company's total donation would only be up to a maximum of \$100,000. The state said that this disclosure – made only after the product was purchased – was inadequate to avoid consumer deception. The manufacturer settled the matter by agreeing to make additional donations to match what would have been given without the \$100,000 cap. **NOTE**: It is not clear whether disclosure of the \$100,000 cap on the outside of the packages would have rescued the promotion. While it certainly would have helped, some state regulators believe that a cap is inherently deceptive unless it is set high enough to assure that *all* (or virtually all) sales made during the promotion will result in a donation of the advertised, per-unit amount to the charity; otherwise the consumer normally has no way to know when a cap has been reached and may be induced to buy a product in the belief that the purchase will aid the charity when that is no longer the case.
- D. Minimum Donation: Is that materially misleading? The answer may depend on the level of the guarantee and the anticipated sales. There have been no enforcement actions, but if the guaranteed amount exceeds the donation that would be generated by anticipated sales, the result could be that consumer purchases no longer affect the donation.
- E. Honest offers by reputable commercial sponsors generally have not been targets for aggressive enforcement of technical requirements of commercial co-venture registration.
1. But beware of “solicitation” disclosures that may be required in commercial co-venture offers. If a state requires such disclosures it may contact the *charity* on the theory that the co-venture offer is a form of solicitation being made on behalf of the charity. The requirements generally can be satisfied with POS materials or package inserts.
  2. Some states also may be strict in their definition of a “professional solicitor” if they sense that a commercial co-venture offer in any way seeks a “contribution” from the consumer beyond the ordinary cost of a product, or if the co-venturer is in any way “compensated” by the charity.
  3. Be aware, also, of local ordinances in California, Florida and Texas. Local authorities may need to be contacted for details, though national programs that comply with standard commercial co-venture disclosures do not typically encounter problems.

F. State and federal authorities have focused on a number of promotional campaigns that may have suggested a greater sponsorship or endorsement by *the charity* of the manufacturer than in fact was warranted.

1. Arthritis Foundation — McNeil Consumer Products Company

In the face of allegations that use of the Arthritis Foundation's name and logo in advertisements for pain relievers was misleading, McNeil and the Foundation agreed in a voluntary compliance order to cease the campaign. Complicating facts included unsubstantiated statements in ads that the products were “new,” that the Foundation had “helped to create” the products, and that a portion of the purchase price of each product would help the Foundation when in fact the manufacturer's donation was a fixed amount plus a percentage of sales if a certain threshold was reached, which it apparently was not. The settlement included provisions for McNeil to pay refunds to consumers upon request, and for payment by McNeil of almost \$2 million in costs, fees and additional donations to arthritis research.

2. *Sunbeam Products v. American Medical Association*

No. 97C 6313 (N.D. Ill. 1997). This was a private action for breach of contract. The AMA agreed to an exclusive arrangement to allow Sunbeam to put the AMA's name and logo on several products, including blood pressure monitors, heating pads, thermometers, etc. In return, the AMA would receive payments in the form of royalties from the sale of the products. When the plan became public, the AMA's own membership protested. Realizing its error (and recognizing the appearance of a conflict of interest), the AMA sought to terminate the deal. Sunbeam, fearing that the public would view the termination as an AMA vote of no-confidence in Sunbeam's products, sued to enforce the contract. The case settled with the AMA paying almost \$10 million in damages. This case is widely viewed as one of the strongest factors leading to the proposed multistate guidelines.

3. *SmithKline Beecham and the American Cancer Society*

SmithKline agreed to pay the American Cancer Society \$1 million per year (plus certain royalties) for the right to use the Society's name in connection with marketing the NicoDerm patch and Nicorette gum. The ads prominently featured the Society's logo, plus the slogan “Partners in Helping Quit.” The Society did not in fact endorse or approve the products as being any more effective than others in helping smokers quit their habit. In fact, the Society had a policy against endorsing products. In a settlement with 12 states, SmithKline agreed to pay \$2.5 million for costs, fees and donations to smoking cessation initiatives.

4. *In the matter of Eskimo Pie Corp.*, F.T.C. Docket No. C-3597 (1995).

The manufacturer agreed to stop running ads that said, “Now Eskimo Pie and the American Diabetes Association are partners in providing the pure pleasure of frozen novelties to everyone!” The Association had not endorsed the advertised product.

5. *Benckiser Consumer Products* — FTC Consent Agreement, 61 Fed. Reg. 10347 (1996)

Advertising for Benckiser's “EarthRite” line of products claimed that a portion of EarthRite's proceeds would be donated to non-profit environmental groups. The FTC alleged that Benckiser had not made any such donations since it started selling EarthRite products in 1992. Benckiser agreed to stop making such claims, unless they were true, and to disclose “clearly, prominently and in close proximity” to any such claim the method of determining the amount of the donation.

- G. The Better Business Bureau/Philanthropic Advisory Service will inquire into charitable promotions that come to its attention, determine whether the organizations comply or will agree to comply with its guidelines, and produce a report available to the public based on its investigation.
- H. As in many areas of advertising law, private class actions may pose a bigger risk than regulatory action. An example is *Demetsenare v. Germanotta*, 2:11-cv-12753-BAF-LJM (E.D. Mich.), a complaint filed on June 24, 2011, alleging that Lady Gaga (a/k/a Stefani Germanotta) engaged in false and misleading business practices when she advertised on her website that “all proceeds” from the sale of certain rubber wristbands via her website would benefit tsunami and earthquake relief efforts in Japan, when, allegedly, some of the \$5.00 purchase price was retained by the seller, along with some or all of the sizable “shipping charges” for the product, which ranged up to \$23.00 depending on the method of shipment selected by the purchaser. Whether the allegations are true or not, the fact that the complaint was filed shows that the class-action bar has discovered cause-marketing activities as potential targets.
- I. What are the consequences of failing to comply?
  1. “Letter of the law” provides for a range of penalties, including criminal penalties in some states.
  2. As a practical matter, failing to comply with technical filing requirements has been treated leniently, except for extreme cases – although compliance later can end up costing more than complying up front. If deception is suspected, expect stricter enforcement and harsher penalties.
  3. The Multistate Guidelines suggest the possibility of increased enforcement under state unfair trade practices laws.

J. How hard is it to comply?

1. For commercial co-venturers, generally not hard.
  - a. Much of the burden falls on charity, especially if the charity is not already registered in all states.
  - b. But ad disclosures don't always fit with the approach the marketer wants to take.
2. For professional fund-raiser/paid solicitor, and fundraising counsel, compliance nationally for a single promotion would be a costly administrative burden.

V. **Areas to Watch**

- A. Internet Enforcement: State authorities are starting to pay attention to e-commerce sites that promise to pay a percentage of purchases to a charity designated by the consumer. Sometimes the donation is never made. Or it is made only after a threshold is reached, and the consumer has no way to know this. Also, the web site may list the selected charities in such a way as to suggest sponsorship, affiliation or endorsement by the charities when this is not the case. Expect to see enforcement action in this area.
- B. NASCO: There is a subgroup of the National Association of Attorneys General called NASCO (National Association of State Charity Officials). It meets formally once a year and its members consult each other informally between formal meetings to discuss enforcement issues. Current issues of concern can be viewed at the Association's website [www.nasconet.org](http://www.nasconet.org).
- C. California Law: In 2021, AB 488 was enacted (effective 1/1/2023) to address charitable fundraising platforms and associated charities. Although the main focus of AB 448 was to create a regulatory system tailored to online sites engaged primarily in soliciting or facilitating the solicitation of charitable fundraising, it has the following effects on merchants conducting CCV, free-action, voting, and/or donation-at-checkout programs:
  1. Online CCV Programs: Register as a "charitable fundraising platform" programs are conducted online, in whole or in part, for the benefit of more than 6 end-beneficiary charities in any calendar year. Cal. Gov. Code §12599.2(a), as amended by Section 14 of AB 488.
  2. Instore CCV Programs: Existing CCV laws continue to apply with no registration requirement as long as the merchant has a written contract with the charity(ies), delivers money to the charity(ies) on a rolling 90-day basis, and provides an accounting with each payment.
  3. Combined Online/Instore CCV Programs: Same as online.

4. Online Donation-at-Checkout Programs: Register as a “charitable fundraising platform.” Cal. Gov. Code § 12599.9(a)(1)(A), regardless whether the merchant is compensated or not.
5. In-store Donation at Checkout Programs: Register as a charitable “trustee” under Cal. Gov. Code § 12582(b). While California authorities have not historically enforced this law to require merchants to register for uncompensated donation-at-checkout programs, members of the AG’s staff offered the existence of this law as a reason to require registration for online programs rather than treating all programs (online or instore) like CCV programs, regardless of lack of compensation to the merchant. The extent to which the statute will be interpreted and enforced to cover such programs, if at all, remains to be seen.
6. Online “Free-Action” Program. If consumers are invited to take a cost-free action (e.g., reposting a message in social media, watching an ad, clicking “like”) to trigger a donation, the California statute can be read to require register as a “charitable fundraising platform” and without the benefit of the safe harbor of conducting such programs for up to 6 end-beneficiary charities within the same calendar year. Cal. Gov. Code § 12599.9(a)(1)(C) & (D). In addition, 11 Cal. ADC §§ 314(o) & (p) expressly mention “free action programs” (without definition) as activity within the statutory definition, which reinforces the broad wording of the statute. It remains to be seen whether California will interpret and enforce the law to be stricter on free-action programs than CCV programs, a result that would be counter-intuitive and inconsistent with the approach generally taken in other states to have less concern about free-action programs than CCV-style programs where consumers incur a cost to trigger a donation by the program sponsor.
7. Online “Voting” Program. In this type of program, the sponsor announces a pre-determined donation and offers consumers the ability to cast votes to help determine how the pre-determined donation will be allocated among a group of charities. The potential beneficiary organizations typically are named in a limited group for consumers to choose among. Like a free-action program, this type of activity generally costs the consumer nothing, though it is theoretically possible a sponsor could require a consumer to make a purchase to be eligible to vote on the allocation of the pre-determined donation amount (which would ***not*** be a CCV program under the standard definition since the purchase action is not triggering a donation, but could be captured within broader definitions in some states, such as Massachusetts and Alabama, where advertising goods or services in connection with the name of a charity technically can come within the wording of the CCV laws). And it fits within the “platform” definition in California where an online site or service invites/allows users to “select one or more recipient charitable organizations to receive donations made by [the] platform or other third party based on purchases ***or other activity***” by users. Cal. Gov. Code § 12599.9(a)(1)(C).

8. Compliance Duties.
  - a. Verify “good standing” of beneficiary charity, defined as being on IRS list of charities and **not** on California “may not operate” list.
  - b. Maintain a separate bank account for charitable funds.
  - c. Make various disclosures, such as whether donations go first to an intermediary “platform charity” rather than directly to the beneficiary charity, whether there are circumstances in which the donation won’t reach the end-beneficiary charity, any fees deducted by the platform, whether charity has not consented to participate, statement as to tax-deductibility of any donation, maximum time for money to reach the end-beneficiary, option for consumer to have their personal data shared with the charity (N/A generally for CCV and free-action programs), and post results of campaign along with when money is sent to charity 15 days after each payment.
  - d. Send funds within 30 days after each calendar quarter (CCV and free-action), and 30 days after month in which donations are received for donation-at-checkout.
  - e. If money must be redirected to a different recipient charity due to a change in circumstances, go back to donors to ask for their input on where their donations should go (for donation-at-checkout, N/A for CCV and free action).
  - f. Forms to File. In addition to an annual registration form, a very complex annual report must be filed listing each charity for which funds were generated, along with many details of the campaign(s) for that charity.
9. Hawaii SB 2983.
  - a. On July 5, 2024, Senate Bill 2983 (“SB 2983”) became law due to signature by the governor and is now known as Act 205. The effective date is January 1, 2026.
  - b. While similar to the California law in many respects (registration with the state, disclosures on websites, recordkeeping, annual reports to the state, etc.), SB 2983 goes much further in other respects. Some key differences to note:
    - i. Rather than creating special regulatory rules for platforms (as in California), Hawaii imports most of the same requirements as for professional fundraisers, including but not limited to:

- ii. Having written consent from every charity for whose benefit funds are raised, even for peer-to-peer fundraising the platform doesn't directly conduct itself, and where such funds flow through a platform charity.
- iii. Filing each contract (with 2 charity signatures) at least 10 days prior to soliciting or providing services for the charity.
- iv. Allowing a charity to void the contract within 10 days after signing, or at any time if the platform operator isn't registered with the state.
- v. A platform charity (i.e., a charity receiving all online donations before regrating the funds to end-beneficiary charities) and the platform are equally liable for any misuse of funds by the other, even if there is no other relationship or control between them.
- vi. No current provision exists to avoid potential double filing duties for platforms already covered by other laws, such as CCV. This issue presumably will get addressed before the law takes effect on January 1, 2026.

## VI. Ways to Make Compliance Unnecessary

### A. If compliance is too burdensome, can you structure a promotion that doesn't require compliance?

1. Yes. The question is whether it's the kind of promotion you want to run.
2. Examples:
  - a. Name of charity publicized on pack or at POS and no other activities conducted.
    - i. OK under most state laws.
    - ii. But may be covered by any state that says simply advertising the name of the charity in connection with a sale is enough (e.g., Massachusetts).
    - iii. Also may trigger some disclosure requirements under the new Multistate Guidelines, especially if the product is one that the charity might appear to have endorsed.
  - b. Purchase of licensed goods for use as premiums.
  - c. Sponsorship and publication of support, without other representations.
  - d. Voiding in "problem" states. Makes holes in a national promotion.



- e. Agencies should emphasize the promotional value of cause-related programs (versus the benefits to charity) when enlisting manufacturer participation in such programs. If possible, agencies should work for and be compensated by the manufacturer, not the charity.
- f. Manufacturers should not charge more for their products when conducting a charitable sales promotion. Even if they are considered commercial co-venturers, this helps to avoid treatment as a professional fund-raiser/paid solicitor.
- g. Manufacturers should not state or imply the consumer will contribute to a charity through them. This will help avoid treatment as a professional fund-raiser. Rather, manufacturers should state *they* will contribute [X¢] when the consumer buys the manufacturer's product. If a marketer does invite direct contributions by consumers, it is important to avoid any "compensation" for the marketer.
- h. If you supply products to a charity for resale by the charity (such as door-to-door sales of candy bars by school groups), make clear that you are merely a supplier to the charity, and that the charity conducts its own sales to its members and the public. The more you function simply as a seller of goods to the charity, the less likely you will be deemed a commercial co-venturer or "fundraising counsel."

## VII. International

- A. Charity Registration. Many countries require a charity to be registered in the country before any fundraising can be conducted on its behalf.
- B. Charity Spending. Some countries require any money raised for a charity in that country to remain and be spent by the charity in that country.
- C. Fundraiser Registration. Some countries might deem the CCV company to be a form of fundraiser with a registration requirement.
- D. Tax Issues – Donations. Any amount you treat as a "donation," might not qualify for deductions or other beneficial treatment in a given country if paid outside the country.
- E. Tax Issues – Intra-company. If sponsor pays money from an entity in one country to a related entity in another country before disbursing to the charity, there might be tax issues.
- F. Consumer Perception. Consumers in any given country might not respond well to an offer benefiting a foreign charity.
- G. Consult Local Counsel. Before running a program in a foreign country, it is advisable to consult knowledgeable counsel in that country.

## STATES ENDORSING THE MULTISTATE GUIDELINES

Arkansas

California

Connecticut

District of Columbia

Florida

Illinois

Kentucky

Maryland

Minnesota

Michigan

New Jersey

New Mexico

New York

Pennsylvania

Texas

Vermont

Wisconsin

## PROFESSIONAL SOLICITOR REGISTRATION

Alabama	Missouri
Alaska	New Hampshire
Arkansas	New Jersey
California	New Mexico
Colorado	New York
Connecticut	North Carolina
District of Columbia	North Dakota
Florida	Ohio
Georgia	Oklahoma
Hawaii	Oregon
Illinois	Pennsylvania
Indiana	Rhode Island
Iowa	South Carolina
Kansas	South Dakota
Kentucky	Tennessee
Louisiana*	Texas**
Maine	Utah
Maryland	Vermont
Massachusetts	Virginia
Michigan	Washington
Minnesota	West Virginia
Mississippi	Wisconsin

*\*Charity must register if it uses a professional solicitor.*

*\*\*Applies to commercial telephone solicitor.*

## FUND RAISING COUNSEL REGISTRATION

Arkansas	Mississippi
California	New Hampshire
Colorado*	New Jersey
Connecticut*	New York
Florida	North Carolina
Georgia*	Ohio*
Hawaii	Oregon**
Illinois	Pennsylvania
Indiana	Rhode Island
Kansas	South Carolina
Kentucky	Tennessee
Maine	Utah
Maryland	Vermont***
Massachusetts	Virginia
Michigan	West Virginia
Minnesota	Wisconsin*

*\*If counsel has custody or control of contributions.*

*\*\*If counsel is principally involved in direct mail campaigns.*

*\*\*\*If counsel's compensation depends in whole or in part on the amount of contributions received.*

STATE <sup>1</sup>	CO-VENTURER	CHARITY	COMMENTS
ALABAMA	<ul style="list-style-type: none"> <li>➤ Register with A.G.</li> <li>➤ File \$10,000 bond.</li> <li>➤ Maintain records for 2 years.</li> <li>➤ Contract in writing with charity.</li> <li>➤ File copy of contract with A.G.</li> <li>➤ File closing statement with A.G.</li> </ul> <p>ALA. CODE § 13A-9-71(h) &amp; (i)</p>		
ARKANSAS	<ul style="list-style-type: none"> <li>➤ Disclose in ads per-unit amount going to charity.</li> <li>➤ Maintain final accounting for 3 years.</li> </ul> <p>ARK. CODE § 4-28-408(b)</p>	<ul style="list-style-type: none"> <li>➤ Contract in writing, must contain statutory provisions.</li> <li>➤ File contract with State.</li> </ul> <p>ARK. CODE § 4-28-408(a)</p>	
CALIFORNIA	<ul style="list-style-type: none"> <li>➤ Contract in writing, signed by at least 2 officers of charity.</li> <li>➤ Pay charity quarterly.</li> <li>➤ Give charity detailed accounting.</li> <li>➤ Disclose in ads: name and address of charity, and percentage of the purchase price that is tax deductible, or a statement that "This purchase is not tax deductible."</li> <li>➤ As of 6/1/2024, register as "charitable fundraising platform" if programs are online and benefit more than 6 charities in any one calendar year.</li> </ul> <p>CAL. BUS. &amp; PROF. CODE §§ 17510.2-17510.7; CAL. GOV'T CODE § 12599.2</p>		<p>The definition of "solicit" is broad enough to cover co-venturer offers. Statutory disclosures for "solicitations" are:</p> <p>Information concerning [name of charity], including financial and charitable purposes may be obtained, without cost, by writing to [charity name and address] or calling [1-800-xxx-xxxx]. Some counties or municipalities may impose additional requirements. Municipal authorities must be contacted for information.</p> <p>CAL. BUS. &amp; PROF. CODE §§ 17510.2(b) &amp; 17510.3(c)</p>
COLORADO	<ul style="list-style-type: none"> <li>➤ If more than one-half of all proceeds of a solicitation will be derived from transactions in Colorado, disclose per-unit amount going to charity in all ads.</li> </ul> <p>COLO. REV. STAT. § 6-16-110</p>		

<sup>1</sup> **NOTE:** This chart summarizes only state laws applicable to commercial co-venture promotions. Laws governing paid fund-raisers, professional solicitors and the like are omitted. However, regulatory authorities have broad discretion in the interpretation and enforcement of such laws and sometimes may seek to apply them to co-venture promotions, especially if the authorities believe a direct solicitation is being made. The general laws governing registration of charitable organizations also are omitted. It is assumed that the charity partner in any co-venture promotion is properly registered in all applicable states where the promotion is offered, and that the charity will file all applicable annual reports. The only duties listed for the charity are those that arise directly as a result of the co-venture promotion. Finally, the chart is only a summary. See actual statutes for details.

STATE <sup>1</sup>	CO-VENTURER	CHARITY	COMMENTS
CONNECTICUT	<ul style="list-style-type: none"> <li>➤ Disclose in ads per-unit amount going to charity.</li> <li>➤ Maintain final accounting for 3 years.</li> </ul> <p>CONN. GEN. STAT. § 21a-190g(b) &amp; (c)</p>	<ul style="list-style-type: none"> <li>➤ Contract in writing, must contain statutory provisions.</li> <li>➤ File contract with State.</li> </ul> <p>CONN. GEN. STAT. § 21a-190g(a)</p>	
DISTRICT OF COLUMBIA			<p>The definition of "solicitation" is broad enough to cover co-venture offers. Anyone who "solicits" is required to:</p> <ul style="list-style-type: none"> <li>➤ Register.</li> <li>➤ Disclose name of charity and name and address of solicitor in ads.</li> <li>➤ File report of contributions secured within 30 days after the promotion.</li> </ul> <p>D.C. CODE §§ 44-1701(3)(A)(iv) &amp; 1703-1706.</p>
FLORIDA	<ul style="list-style-type: none"> <li>➤ Obtain written consent to use charity's name.</li> <li>➤ Maintain final accounting for 3 years.</li> </ul> <p>FL. STAT. § 496.414</p>		<p>The definition of "solicit" is broad enough to cover co-venture offers. Statutory disclosures for "solicitations" are:</p> <p>A copy of the official registration and financial information may be obtained from the Division of Consumer Services by calling toll-free within the state 1-800-435-7352 or visiting the DCS website. Registration does not imply endorsement, approval, or recommendation by the state.</p> <p>FL. STAT. § 496.411.</p>
GEORGIA	<ul style="list-style-type: none"> <li>➤ Contract in writing.</li> <li>➤ Maintain final accounting for 3 years.</li> </ul> <p>GA. CODE § 43-17-6(b) &amp; (c)</p>	<ul style="list-style-type: none"> <li>➤ Contract in writing.</li> <li>➤ Upon request, provide copy of contract to State.</li> <li>➤ Contract must contain statutory provisions.</li> </ul> <p>GA. CODE § 43-17-6(a)</p>	

STATE <sup>1</sup>	CO-VENTURER	CHARITY	COMMENTS
HAWAII	<ul style="list-style-type: none"> <li>➤ Disclose in ads co-venturer's name.</li> <li>➤ Obtain written consent to use charity's name; consent contract must contain statutory provisions.</li> <li>➤ File copy of consent contract with State.</li> <li>➤ Maintain final accounting for 3 years.</li> <li>➤ As of 1/1/2026, if operating online, registration as an "online charitable fundraising platform" potentially could apply if the CCV and platform laws are not reconciled.</li> </ul> <p>HAW. REV. STAT. § 467B-5.5; S.B. 2983 (2024)</p>		<p>Effective 1/1/2026, HI's Online Charitable Fundraising Platform Law will cover the same activity; it remains to be seen how the State will reconcile the two statutes, if at all.</p> <p>S.B. 2983 (2024)</p>
ILLINOIS	<ul style="list-style-type: none"> <li>➤ Register as a "charitable trust."</li> <li>➤ File annual reports with A.G.</li> </ul> <p>760 ILL. COMP. STAT. 55/3, 55/6, &amp; 55/7</p>		<p>CCV not defined by statute. A.G.'s position is based upon broad language of the Charitable Trusts Act, which could also apply to volunteer solicitation situations.</p>
LOUISIANA	<ul style="list-style-type: none"> <li>➤ Obtain written consent to use charity's name.</li> <li>➤ Disclose in ads per-unit amount going to charity.</li> <li>➤ Maintain final accounting for 3 years.</li> </ul> <p>LA. REV. STAT. § 51:1901.2</p>		
MARYLAND			<p>The definition of "charitable solicitation" is broad enough to cover co-venture offers. Statutory disclosures for "solicitations" are:</p> <p>For the cost of copies and postage, documents and information submitted under the Maryland Charitable Solicitations Act is available from the Maryland Secretary of State, State House, Annapolis, MD 21401.</p> <p>MD. CODE., BUS. REG. §§ 6-101 &amp; 6-411(b)</p>

STATE <sup>1</sup>	CO-VENTURER	CHARITY	COMMENTS
MASSACHUSETTS	<ul style="list-style-type: none"> <li>➤ Register.</li> <li>➤ Post \$25,000 bond.</li> <li>➤ File annual reports.</li> <li>➤ Contract in writing &amp; to be filed.</li> <li>➤ Disclose in ads name, address &amp; phone number of charity, charitable purpose &amp; per unit amount going to charity, &amp; geographic distribution &amp; circulation of publication in which ad will appear.</li> <li>➤ Maintain financial records for 3 years</li> </ul> <p>MASS. GEN. LAWS CH. 68 §§ 22-26</p>		<p>The definition of a "commercial co-venturer" covers anyone who advertises a product or service in connection with the name of a charity. This definition could result in application of the law to a non-compensated company that voluntarily collects contributions in stores.</p> <p>MASS. GEN. LAWS CH. 68 § 18</p>
MICHIGAN			<p>Although not required by statute, the Michigan Attorney General's office recommends that the charity's registration number be provided in all solicitations, upon request.</p>
MINNESOTA			<p>The definition of "solicit" is broad enough to cover co-venturer offers. Statutory disclosures for "solicitations" include a description of the program, plus the following:</p> <p>Information concerning [charity] is available from [charity] at [address]. Contributions are tax deductible to the extent permitted by law.</p> <p>MINN. STAT. §§ 309.50, subd. 10(4) &amp; 309.556, subd. 1</p>
MISSISSIPPI	<ul style="list-style-type: none"> <li>➤ Contract in writing.</li> <li>➤ File with State online notice of promotion with copy of contract 7 days before start of promotion.</li> <li>➤ File financial accounting within 30 days after promotion ends &amp; annually if promotion is longer than 1 year, with details of in-state sales/donations.</li> </ul> <p>1 Miss. CODE R. § 15-3.17</p>		



STATE <sup>1</sup>	CO-VENTURER	CHARITY	COMMENTS
NEW HAMPSHIRE	<ul style="list-style-type: none"> <li>➤ Contract in writing.</li> <li>➤ Maintain final accounting for 3 years.</li> <li>➤ Disclose in ads per-unit amount going to charity.</li> </ul> <p>N.H. REV. STAT. § 7:28-d, III &amp; IV</p>	<ul style="list-style-type: none"> <li>➤ File notice of the promotion in advance.</li> <li>➤ Contract must contain statutory provisions</li> </ul> <p>N.H. REV. STAT. § 7:28-d, I &amp; II</p>	
NEW JERSEY	<ul style="list-style-type: none"> <li>➤ Disclose in ads per-unit amount going to charity.</li> <li>➤ Maintain accurate records for 3 years.</li> </ul> <p>N.J. STAT. §§ 45:17A-29(d) &amp; 31(a)</p>	<ul style="list-style-type: none"> <li>➤ Contract in writing, must contain statutory provisions.</li> <li>➤ File copy of contract with A.G. 10 days before start of promotion.</li> <li>➤ File report after promotion, must use State form.</li> </ul> <p>N.J. STAT. § 45:17A-29; N.J. ADMIN. CODE 13:48-9.2.</p>	<p>The definition of "solicit" is broad enough to cover co-venture offers. Statutory disclosures for "solicitations" can be found in list following this chart. are as follows:</p> <p>N.J. STAT. §§ 45:17A-30 &amp; 38</p>
NEW YORK	<ul style="list-style-type: none"> <li>➤ Contract in writing.</li> <li>➤ Obtain written consent to use charity's name.</li> <li>➤ Maintain final accounting for 3 years.</li> <li>➤ Provide interim accounting within 90 days after promotion and annually if promotion is longer than 1 year.</li> <li>➤ Disclose in ads per-unit amount going to charity.</li> </ul> <p>N.Y. EXEC. LAW §§ 173(2), 173-A, 174-C, &amp; 174-D</p>	<ul style="list-style-type: none"> <li>➤ File contract with A.G.</li> <li>➤ Contract in writing, must contain statutory provisions.</li> </ul> <p>N.Y. EXEC. LAW § 174-A</p>	<p>The definition of "solicitation" is broad enough to cover co-venture offers. Statutory disclosures for solicitations are as follows:</p> <p>A copy of the most recent annual report of [charity] is available from [charity] at [address] or from the State of New York Department of Law, Charities Bureau, 120 Broadway, New York, NY 10271.</p> <p>N.Y. EXEC. LAW § 174-B(1)</p> <p>AG issued guidelines for disclosure "best practices" in October 2012.</p> <p><a href="https://www.charitiesnys.com/cause-marketing.html">https://www.charitiesnys.com/cause-marketing.html</a></p>

<p>NORTH CAROLINA</p>	<ul style="list-style-type: none"> <li>➤ Contract in writing, must contain statutory provisions.</li> <li>➤ Maintain final accounting for 3 years.</li> </ul> <p>N.C. GEN. STAT. § 131F-18 &amp; 18 N.C. ADMIN. CODE § 11.0505</p>	<ul style="list-style-type: none"> <li>➤ File final accounting with State, or incorporate accounting into annual financial report.</li> </ul> <p>18 N.C. ADMIN. CODE § 11.0505 (b)</p>	<p>The definition of "solicit" is broad enough to cover co-venture offers. Statutory disclosures for "solicitations" are:</p> <p>Financial information about this organization and a copy of its license are available from the State Solicitation Branch at 1-919-814-5400. The license is not an endorsement by the State.</p> <p>N.C. GEN. STAT. § 131F-9</p>
<p>OHIO</p>	<ul style="list-style-type: none"> <li>➤ Obtain written consent to use charity's name.</li> <li>➤ Disclose in ads per-unit amount going to charity.</li> <li>➤ Maintain final accounting for 3 years.</li> </ul> <p>OHIO REV. CODE §§ 1716.09 &amp; 1716.11</p>		
<p>OREGON</p>	<ul style="list-style-type: none"> <li>➤ Obtain written consent to use charity's name.</li> <li>➤ Disclose in ads co-venturer's name and per-unit amount going to charity.</li> <li>➤ Maintain final accounting for 3 years.</li> </ul> <p>OR. REV. STAT. §§ 128.824, 128.848, &amp; 128.856</p>	<ul style="list-style-type: none"> <li>➤ Contract in writing with co-venturer specifying per-unit amount going to charity.</li> </ul> <p>OR. REV. STAT. § 128.823</p>	
<p>PENNSYLVANIA</p>	<ul style="list-style-type: none"> <li>➤ Obtain written consent to use charity's name.</li> <li>➤ Written consent must be signed by two authorized officers, directors, or trustees of the charity.</li> </ul> <p>10 PA. STAT. § 162.15(a)(3) &amp; (12)</p>	<ul style="list-style-type: none"> <li>➤ File summary of promotion terms &amp; results in annual financial report.</li> </ul> <p>10 PA. STAT. § 162.5(e)</p>	<p>The definition of "solicitation" is broad enough to cover co-venture offers. Statutory disclosures for "solicitations" are as follows:</p> <p>The official registration and financial information of [charity name] may be obtained from the Pennsylvania Department of State by calling toll free, within Pennsylvania 1-800-732-0999. Registration does not imply endorsement.</p> <p>10 PA. STAT. § 162.13(c)</p>

RHODE ISLAND			<p>The definition of "solicit" is broad enough to cover co-venture offers. Any person soliciting contributions must have a written contract with the charity.</p> <p>R.I. GEN LAWS §§ 5-53.1-1 &amp; 5-53.1-8</p>
SOUTH CAROLINA	<ul style="list-style-type: none"> <li>➤ Contract in writing with charity, must contain statutory provisions.</li> <li>➤ Register with State.</li> <li>➤ File contract, plus "Notice of Solicitation" form at least 10 days before start of promotion.</li> <li>➤ File annual report.</li> <li>➤ Maintain final accounting for 3 years.</li> </ul> <p>S.C. CODE §§ 33-56-70, 33-56-100, &amp; 33-56-110</p>		
TENNESSEE	<ul style="list-style-type: none"> <li>➤ Contract in writing with charity, signed by authorized representative of coventurer and 2 officers of charity.</li> <li>➤ Maintain final accounting for 3 years.</li> </ul> <p>TENN. CODE. §§ 48-101-513 &amp; 48-101-519</p>	<ul style="list-style-type: none"> <li>➤ File contract with Secretary of State using State form (countersigned by CCV) at least 5 business days before beginning sales promotion.</li> </ul> <p>TENN. CODE. §48-101-519</p>	
TEXAS			<p>Secondary sources report that some Texas municipalities may have ordinances requiring local filings and disclosure in ads of the amount going to charity. Municipal authorities must be contacted for more information.</p>
UTAH	<ul style="list-style-type: none"> <li>➤ Disclose in ads per-unit amount going to charity.</li> </ul> <p>UTAH CODE § 13-22-22</p>		<p>Prior law requiring charity to file copy of contract repealed in 2024.</p> <p>H.B. 43 (2024)</p>
VERMONT	<ul style="list-style-type: none"> <li>➤ Disclose in ads per-unit amount going to charity or charitable purpose and any caps.</li> </ul> <p>VT. STAT. TIT. 9 § 2481b</p>		

<p>VIRGINIA</p>	<ul style="list-style-type: none"> <li>➤ Obtain written consent to use charity's name.</li> <li>➤ Contract in writing signed by an authorized representative of co-venturer and 2 officers of charity.</li> <li>➤ Maintain records for 3 years.</li> </ul> <p>VA. CODE §§ 57-57(C) &amp; 57-61.2</p>		<p>The definition of "solicit" is broad enough to cover co-venture offers. Statutory disclosures for "solicitations" are as follows:</p> <p>A copy of the financial statement is available from the State Office of Consumer Affairs, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219 or call 1-804-786-1343.</p> <p>VA. CODE § 57-55.3</p>
<p>WASHINGTON</p>			<p>The definition of "solicit" is broad enough to cover co-venture offers. Statutory disclosures for "solicitations" are:</p> <p>Financial information is available from the Secretary of State, Charities Division, Olympia, WA 98504, or call, in state, 1-800-332-4483.</p> <p>WASH. REV. CODE §§ 19.09.020 &amp; 19.09.100</p>
<p>WEST VIRGINIA</p>			<p>The definition of "solicit" is broad enough to cover co-venture offers. Statutory disclosures for "solicitations" are:</p> <p>West Virginia residents may obtain a summary of the registration and financial documents from the Secretary of State, State Capital, Charleston, WV 25305. Registration does not imply endorsement.</p> <p>W. VA. CODE §§ 29-19-2(5)(D) &amp; 29-19-8</p>

<p>WISCONSIN</p>	<ul style="list-style-type: none"> <li>➤ Obtain written consent of charity.</li> <li>➤ Disclose in ads per-unit amount going to charity.</li> </ul> <p>Wis. STAT. §§ 202.15 &amp; 202.16</p>		
<p>FEDERAL – CFPB</p>	<ul style="list-style-type: none"> <li>➤ For issuers of college-affinity cards marketed to current student of any institution of higher education (with or without CCV offer), give annual report to CFPB of contract with higher education institution, amounts paid to higher education institution, and number of new and total outstanding college-affinity credit cards issued to students.</li> </ul> <p>15 U.S.C. § 1637(r)</p>		

**Sample Disclosure to Make to Consumers  
at Point of Solicitation  
(or by link from the solicitation page)**

Information concerning [name of charity], including financial, licensing or charitable purposes(s) may be obtained, **without cost**, by writing to [name and address], or by calling 1-800-[xxx-xxxx].

In addition, residents of the following states may obtain financial and/or licensing information from their states, as indicated. Registration with these states, or any other state, does not imply endorsement by the state. **Florida:** A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE, WITHIN THE STATE, 1-800-435-7352 OR VISITING <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services>. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL OR RECOMMENDATION BY THE STATE.<sup>2</sup> **Maryland:** For the cost of copies and postage, documentation and information submitted under the Maryland Charitable Solicitations Act is available from the Maryland Secretary of State, State House, Annapolis, MD 21401, 1-410-974-5534. **Michigan:** The registration number of [name of charity] in the state of Michigan is [registration number]. **Mississippi:** The official registration and financial information of [name of charity] may be obtained from the Mississippi Secretary of State's office by calling 1-601-359-1599. Registration with the Secretary of State does not imply endorsement. **New Jersey:** INFORMATION FILED WITH THE ATTORNEY GENERAL CONCERNING THIS CHARITABLE SOLICITATION AND THE PERCENTAGE OF CONTRIBUTION RECEIVED BY THE CHARITY DURING THE LAST REPORTING PERIOD THAT WERE DEDICATED TO THE CHARITABLE PURPOSE MAY BE OBTAINED FROM THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY BY CALLING 1-973-504-6215 AND IS AVAILABLE ON THE INTERNET AT [WWW.NJCONSUMERAFFAIRS.GOV/CHARITIES](http://WWW.NJCONSUMERAFFAIRS.GOV/CHARITIES). REGISTRATION WITH THE ATTORNEY GENERAL DOES NOT IMPLY ENDORSEMENT. **Nevada:** [Name of Charity] is incorporated in [State] with a mission of [SHORT DESCRIPTION]; contributions are deductible to the extent allowed by law under 26 USC § 170(c). **New York:** Information about [name of charity] and a copy of the most recent annual report is available from [name of charity] or the New York State Office of the Attorney General, Charities Bureau, at [charitiesnys.com](http://charitiesnys.com) or 212-416-8401. **North Carolina:** Financial information about this organization and a copy of its license are available from the State Solicitation Licensing Branch at 1-919-814-5280. The license is not an endorsement by the State. **Pennsylvania:** The official registration and financial information of [name of charity] may be obtained from the Pennsylvania Department of State by calling toll-free, within Pennsylvania, 1-800-732-0999. Registration does not imply endorsement. **Virginia:** A copy of the financial statement is available from the State Office of Consumer Affairs, Department of Agricultural and Consumer Services, 102 Governor Street, Richmond, VA 23219 or call 1-804-786-1343. **Washington:** Financial information is available from the Secretary of State, Charities Division, Olympia, WA 98504, or call, in state, 1-800-332-4483. **West Virginia:** West Virginia residents may obtain a summary of the registration and financial documents from the Secretary of State, State Capital, Charleston, WV 25305. Registration does not imply endorsement.

Contributions are tax deductible to the extent permitted by law.

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<sup>2</sup> If solicitation occurs online, an amendment to Fl. Stat. §496.412 (effective 7/1/14) technically requires the full Florida disclosure to appear "conspicuously" on the same page where the solicitation occurs. *Error! Unknown document property name.*