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Removing Requirements for Commercial Co-Ventures: Maine Repeals Registration Requirements for Promotions with Charitable Appeal

Starting this week, commercial co-ventures will have one less state to worry about when it comes to regulatory requirements for conducting promotions with charities. Earlier this summer, the Maine legislature passed the [Act to Streamline the Charitable Solicitations Act](#) (the "Act"), which, among other things, repealed all requirements for commercial co-ventures to register in Maine. The Act is effective October 9, 2013. Prior to the Act, Maine had been one of the more onerous states for commercial co-ventures, requiring that the commercial co-venture register with the state and obtain a \$25,000 bond before conducting a promotion.

A commercial co-venturer was previously defined in Maine as one who "conducts a sale, performance, event, or collection and sale of donated goods that is advertised in conjunction with the name of a charitable organization." The most common form of a commercial co-venture is a promotion that advertises when a consumer buys a product, a dollar or percentage amount of the purchase price will be donated to a charity. These types of promotions are particularly popular in October, when many products turn pink for breast cancer awareness month.

The Maine Department of Professional and Financial Regulation, which helped to develop the Act, explained in testimony that Maine had never received a complaint about commercial co-ventures.

Maine Requirements Not Affected by Repeal

Importantly, passage of the Act does not repeal the annual registration responsibilities for charities in Maine; it simply lifts the requirement that specific promotions be registered. Maine, like 38 other states, requires charities to register prior to soliciting charitable contributions in the state. Therefore, companies that wish to partner with charities to advertise a promotion in Maine should continue to ensure the charity itself is registered in Maine, as well as in other states where it is required. Also, although it is no longer legally required in Maine, it is generally a best practice for companies conducting charitable promotions to have a written agreement with the charity, so that all parties understand the terms of the promotion; this agreement will be required to be filed in certain other states. Charitable promotions in Maine continue to be subject to the Maine Unfair Trade Practices Act, which generally prohibits unfair or deceptive advertising.

Commercial Co-Venture Requirements in Other States

Regardless of developments in Maine, other states with commercial co-venture registration and bonding requirements – Alabama, Massachusetts, Illinois, and, in some cases, California – continue to maintain their statutory commercial co-venture requirements. Eight other states require that an agreement between the charity and the commercial co-venture be filed with the state, and many states have statutory requirements for provisions the agreement must contain. Additionally, numerous states require that specific disclosures be made in each advertisement for the commercial co-venture promotion, such as the dollar amount or percentage per good or service that will benefit the charity and the name and address of the charity. Therefore, although conducting promotions in Maine will become easier, commercial co-ventures will still have plenty of other state requirements to consider for nationwide promotions.

Many companies will welcome Maine's repeal of its commercial co-venture requirements, as these requirements can impose a significant administrative burden on companies wishing to promote a charitable purpose as part of an advertising campaign. In [testimony in support of the Maine Act](#), Anne Head, director of Maine's Department of Professional and Financial Regulation, explained that Maine's former requirements for commercial co-ventures were unnecessary because, "[t]he agreement between the charitable organization and the sponsor is a matter of contract law" and "any dispute

arising between a charitable organization and a sponsor concerning the remittance of contributions, or the amount of contributions collected, can be resolved by those parties or by the courts as a matter of contract law.” It will remain to be seen whether other states follow Maine’s approach in easing administrative requirements for companies seeking to conduct charitable promotions and commercial co-ventures.

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