

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

H.B. No. 2244, RELATING TO CHARITABLE SOLICITATION.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

DATE: Wednesday, February 5, 2014 **TIME:** 2:10 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Hugh Jones, Deputy Attorney General

Chair McKelvey and Members of the Committee:

The Attorney General supports the passage of this bill with one technical amendment.

The purposes of this bill are to: (1) improve upon and clarify provisions of Hawaii's charitable solicitation and registration law through the creation of a new section devoted to collection bins used for donations of household items and clothing; (2) make amendments to provisions regulating charitable sales promotions by commercial co-venturers; (3) make technical amendments to facilitate electronic registration and reporting by registered professional solicitors; and (4) make clarifying and technical or housekeeping amendments.

We ask that you pass this bill out of Committee as described below.

Collection Box Disclosures

As the news articles attached hereto demonstrate, on the mainland and in other countries there has been a proliferation of "for-profit" companies placing "collection boxes" or "bins" in parking lots and other public locations for the "donation" of household items and clothing. Attorneys General in the states of Washington, Oregon, Ohio, and Florida have taken enforcement actions to prevent consumers from being misled that these collection boxes are being operated by charitable organizations. California, Texas, Michigan, North Carolina, and other states have enacted disclosure requirements for collection boxes for donated household items and clothing as a matter of consumer protection to prevent consumer confusion regarding for profit companies that collect these items and re-sell them for a profit.

This bill proposes to require clear disclosures on collection boxes operated by for-profit and nonprofit organizations to clearly disclose whether the operator is for-profit or nonprofit and disclose the name, address, phone number, and internet address of the owner and operator of the

box. If the owner or operator of a collection box is a for-profit organization, the owner/operator must also disclose that the donation is not tax deductible. If the collection box is owned or operated by a professional solicitor, the bill provides that the charitable cause may be posted on the sides of the box.

Clarification of Charity Registration Requirements

This bill also proposes an amendment to section 467B-2, Hawaii Revised Statutes (HRS) to clarify only those charitable organizations that solicit “contributions,” as that term is defined in section 467B-1, HRS, must register with the Department of the Attorney General (Department). Another amendment clarifies that a parent organization that has received a group exemption ruling from the Internal Revenue Service (IRS) may submit a registration form for subordinate organizations, chapters, and branches, etc., that are included in the parent organization’s annual information return to the IRS.

Amendments to Facilitate Online Submission of Financial Reports by Professional Solicitors

Registered Professional Solicitors must presently submit a financial report to the Attorney General at the end of any solicitation campaign for a charitable organization. This bill proposes a technical amendment to allow financial reports to be submitted via an internet based registration system for professional solicitors and fundraising counsels under development by the Department. The bill also proposes a fine for the late submission of end of solicitation campaign financial reports by professional solicitors.

Changes to Charitable Sales Promotion/Commercial Co-Venture Regulations

This bill proposes to amend section 467B-5.5, HRS, to require an accounting by a commercial co-venturer no more than 30 days after any charitable sales promotion and authorizes the Attorney General to issue cease and desist orders to commercial co-venturers who are in violation of the requirements applicable to commercial co-venturers. The Attorney General currently has the authority to issue cease and desist orders for violations by registered charities and professional fundraisers.

Repeal of Annual Fee for Charities that Are Exempt from Registration but that Register Anyway

Charities that have under \$25,000 in contributions annually generally qualify for an exemption from chapter 467B, HRS, registration requirements provided they do not contract with a professional solicitor. This bill proposes to repeal the annual \$10 fee for charities with

annual contributions under \$25,000 as an incentive for small charities to register anyway and make their financial and operating data available to donors and the public.

Amendments to Section 467B-11.5, HRS (the Exemption Section)

In addition to other technical amendments, this bill proposes to clarify the method by which a charity that qualifies for exemption from registration applies for and receives an exemption ruling from the Department of the Attorney General. The bill also makes a clarifying amendment to section 467B-11.5, HRS, due to a name change by the Middle States Commission on Higher Education, one of several regional accrediting agencies for educational institutions.

Technical Amendment

The Attorney General requests that the phrase “taking into account any extension of time for filing” on page 4, of lines 7 and 8, and the word “a” on page 4, line 9, be deleted from section 3 of this bill. Section 467B-2.5, HRS, does not authorize the Attorney General to grant such extensions so this wording is superfluous.

Additionally, the Attorney General requests that the phrase “an initial fine of \$100 shall be imposed and an additional fine” be inserted after the word “cause,” on page 4, of line in section 3 of this bill so that the new material on page 4, lines 6 through 15, of section 3 of this bill reads as follows:

If a financial report required under this section is not filed, unless it is shown that the failure is due to reasonable cause, an initial fine of \$100 shall be imposed and an additional fine of \$20 shall be imposed for each day during which the violation continues; provided that the total amount imposed under this subsection shall not exceed \$1,000. The professional solicitor shall provide a copy of the financial report to the charitable organization to which the financial report pertains within ten days of its submission of the report to the attorney general.

The Attorney General requests the Committee’s favorable consideration of this bill with the amendments noted above.

Leader Local News

Herald Sun

Leader

Leader

People are being fooled by hundreds of street donation bins that benefit big business rather than a good cause, investigation finds

- by: Kylie Adoranti, John Trevorrow
- From: Leader
- January 13, 2014 12:00AM

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National Association of Charitable Recycling Organisations chief executive Kerry Caulfield.
Source: Supplied

MORE than 80 per cent of donation bins across Melbourne are operated by commercial

businesses rather than recognised charities, a Leader investigation has revealed.

Householders wanting to help charities are being easily fooled, and a national charitable group says stronger policies are needed to stop commercial operators from disguising their donation bins as charity drop-points.

The latest research, compiled by Sustainability Victoria, estimates there are 1350 clothing bins spread across Victoria.

Of these, at least 1100 are run by commercial operators and only 250 are operated by charities.

National Association of Charitable Recycling Organisations (NACRO) chief executive Kerryn Caulfield said Melbourne had a huge problem with privately owned donation bins that falsely appeared to be operated by charities.

"The public don't understand they are giving goods to a company that profits from selling items. It is big business," Ms Caulfield said.

>>What do you think? Have you been duped into donating to a bin that benefits business rather than charity? Leave your comment below.

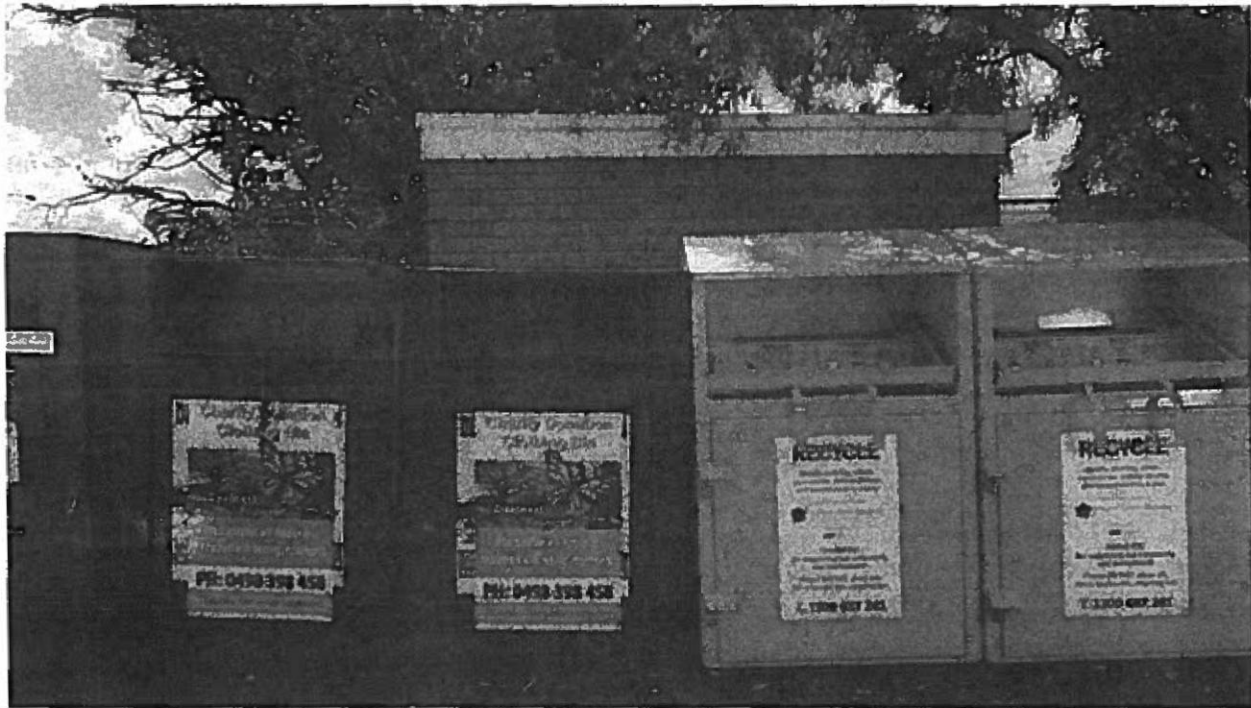
She said councils should be more vigilant in looking out for the commercial bins disguised as charity bins.

"We have nothing against recyclers but we do not like people who are pretending to be charities. Commercial operators will make all sorts of claims, such as they are helping the charities, so the councils need to implement policies to curb the behaviour of the commercials," she said.

"Councils need to police whether the donation bins are legitimate or not."

Sustainability Victoria's research was compiled late last year and its estimate of 1350 clothing bins relates to 2012, the latest available data on an issue that is shrouded in confusion and a tangle of different approaches to permits and rules about where the bins can be placed for public donations of clothing and goods.

Consumer Affairs received only two complaints last year regarding charity and clothing bin labelling. But Ms Caulfield said that did not truly reflect the extent of the problem.



At least 1100 of Victoria's estimated 1350 clothing bins are commercially operated.

Source: News Limited

Each council in Melbourne has different regulations relating to charity and for-profit collection bins.

Boroondara Council banned all commercial bins on council land in November but would still allow charity bins if the owner of the bin was registered with the Australian Charities and Not-For-Profits Commission.

Council environment and infrastructure director Bruce Dobson said the council would develop procedures relating to the operation of charity bins on council land.

Mr Dobson said the difference between registered charity bins and privately owned bins was sometimes difficult to distinguish.

Other councils, such as Macedon Ranges Shire Council, do not have any local laws in place which distinguish between charity and privately owned bins.

Its law states that an organisation or person must obtain a permit to place a clothing bin on a road, council land or any public place. The permit fee is \$135 and the bin owner is responsible for its maintenance.

At Maroondah and Manningham councils, all charity and privately owned bins need a permit. It costs \$85 for a permit to have a bin on public land in Manningham.

Maroondah Council Mayor Les Willmott said bins were not allowed on council land, and needed a permit if on private land.

Consumer Affairs Victoria executive director Claire Noone said clothing bin collections could be for both commercial and charitable purposes.

Ms Noone said clothing bin labelling requirements were removed from Victoria's Fundraising Act after industry consultation.

"The onus is on charities seeking public contributions to label their bins clearly so that the public is able to identify and select a charity over a commercial bin," she said.

Ms Noone said it helped if charities identified the percentage of the contribution going to the charity.

Dandenong Council suggests anyone who wants to donate clothes to a charity should look for a bin with the NACRO symbol or stick with known charity organisations.

** Leader does not claim any specific organisation referred to or pictured is acting illegally or improperly.*

WHAT THE LAW SAYS

Second-hand clothing shops are exempt from the requirement to be registered as a second-hand dealer.

However, if they are attempting to collect clothing through a fundraising appeal or what looks like one, they must be registered as a fundraiser with Consumer Affairs Victoria.

Under the Australian Consumer Law, it is unlawful to make false or misleading representations about goods and services when supplying, offering to supply or promoting those goods or services.

A business also must not mislead or deceive consumers.

This means consumers must not be led to believe that clothes they are putting into a clothing bin will be donated to charity when this is not the case.

For more information and to check if a charity is registered as a fundraiser, go to [consumer.vic.gov.au/fundraisers](http://www.consumer.vic.gov.au/fundraisers) (<http://www.consumer.vic.gov.au/fundraisers>)

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George Beaverwavemen

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The problem is southern cross recycling collects all these clothes and say they help charities, the community, employed people, but they don't employ anybody in Australia and they don't help any charities. What they do is send everything over seas and get third world country people to work for \$10/week so they can get rich and rip everybody off. That is why it should be policed, so people like this cannot do this to the public.

Very GOOD!!!! job Kerryn Caulfield we support you 150% don't stop till the job is done.

There should be more people like you to who look out for charities. Many thanks keep up the good work.

2  Like Reply



Richard Head

9 days ago

DAILY NEWS

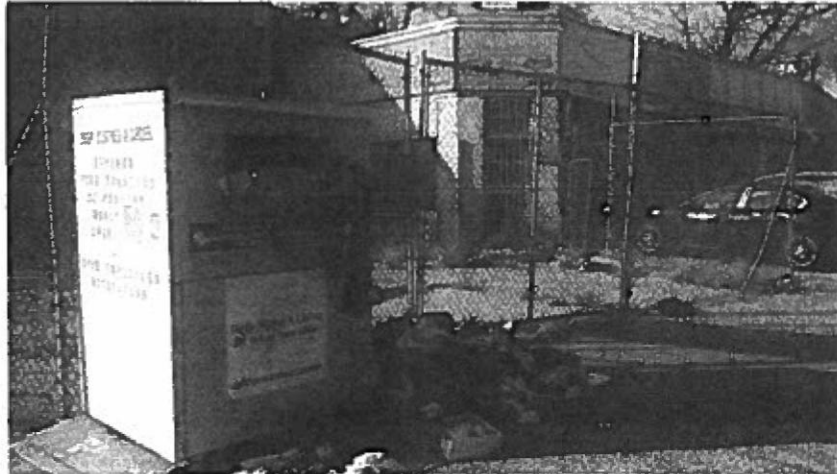
LOCAL

Spike in number of illegal clothing drop-off bins removed by Sanitation Department

Pol warns that the massive metal bins are 'scams' and donated clothing may not actually go to those in need.

BY REUVEN BLAU / NEW YORK DAILY NEWS

MONDAY, JANUARY 20, 2014, 2:27 PM



REUVEN BLAU/NEW YORK DAILY NEWS

This bin in Kensington, Brooklyn, was removed by the Sanitation Department last week.

City streets are going to the clothing drop-off dumps.

Over the past six months, the Sanitation Department has removed 37 massive metal bins illegally placed on city sidewalks — a 23% spike from the 30 trash bins removed all last fiscal year, the Daily News has learned.

The bins, which first began appearing at least a year ago in neighborhoods across Brooklyn, Queens and the Bronx, are meant to encourage clothing donations by good samaritans, but it's unclear who owns and operates the bins — or whether those in need actually ever receive the donated duds.

"They are a scam and people need to be careful who they donate clothing to," said City Councilman Daniel Dromm of Queens, who suspects that the clothing inside rarely gets to the poor and, instead, is washed and resold or recycled for a profit. "They're eyesores and attract vermin."

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One pink clothing bin spotted on an 18th Ave. sidewalk near E. Second St. in Kensington promised, "Through your donations we provide money and charity & give employees occupation."

Earlier this month the Sanitation Department slapped the bin with a yellow sticker warning the owners that they had 30 days to remove it from the sidewalk.

In the meantime, an overload of donations caused a major spillover onto the sidewalk and street, wreaking havoc for pedestrians and business owners in the neighborhood.

Last week, the bin was removed, dismantled and sent to a metal recycling vendor working for the city.

RELATED: PARENTS ASK CITY TO STOP BOUNCING KIDS AROUND

But not all the blights have been yanked yet.

There's still many more littering the city's streets, including one on Eighth St. and Roosevelt Ave. in Far Rockaway, Queens.

The Sanitation Department is looking into it, a spokeswoman said.

Brooklyn leads the way with 24 removed since July 1. The Bronx is second with eight, Staten Island third with four, and Queens fourth with one.

RELATED: H&M CREATES NEW DENIM COLLECTION FROM OLD CLOTHES

None have been spotted by the Sanitation Department in Manhattan.

Dromm is researching legislation that would require all bins on private property to list a name and phone number as well as detail where the donations are being sent.

"There's a level of deception that may rise to criminality," he said.

Still, there's no fine levied against the sidewalk scofflaws under a 2007 measure outlawing the bins.

"Otherwise people would just keep paying the summons as a cost of doing business on public property," said Sanitation Department spokeswoman Kathy Dawkins.

The Sanitation Department runs its own clothing drop-off charity called re-fashionNYC. But those bins are put inside commercial and residential properties.

rblau@nydailynews.com

OTHERSTORIES



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the%20Rescue%20Mission%20is%20setting%20up%20clothing%20donation%20boxes%20in%20parking%20lots%20around%20the%20region%20to%20compete%20w

Bin battle: Your old clothes are worth millions to the Rescue Mission and other charities



The Rescue Mission sorts clothes and other donated items at a facility in Liverpool. Team Leader Robin Rich attaches price tags to clothing on these long racks. The organization recently began putting in parking lot clothing donation bins with groups from out of the area that are receiving more than 200,000 pounds of used clothing that used to end up in Rescue Mission donations. (David Lassman | dlassman@syracuse.com)

Print (http://blog.syracuse.com/news/print.html?entry=/2014/01/bin_battle_your_donated_clothes_are_worth_millions_to_the_rescue_mission_and_oth.html)

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on January 12, 2014 at 6:00 AM, updated January 12, 2014 at 6:04 AM

SYRACUSE -- Two million pounds of clothes are donated to the Rescue Mission

(<http://www.rmlifechanging.org/>) every year in Central New York.

Some of those old pants and shoes are resold in Syracuse or donated to poor people

who need them.

But more than 1 million pounds - the ripped and the stained - get sold on the used-clothing market.

The \$11 million raised by selling clothing donations -- both in local stores to be worn and internationally as recycled clothing -- makes up more than half of the Rescue Mission's \$18 million budget.

And now the cash cow that's culled from messy closets and overstuffed dresser drawers is being threatened. Charles Chappell, chief commercial officer of the Rescue Mission, said clothing donations dropped by 200,000 pounds last year.

The second-hand clothing market that helps fund the Rescue Mission is big business: It generates \$1 billion annually worldwide. Businesses and nonprofits are expanding to take advantage of the old clothes' potential. And they're creating a battle of the bins in Syracuse and Central New York.

Chappell is pretty sure those ripped jeans, sweaters and shoes missing from the Rescue Mission's donations last year went to out-of-town competitors: **Planet Aid** (<http://www.planetaid.org/>) and **USAgain** (<http://www.usagain.com/>).

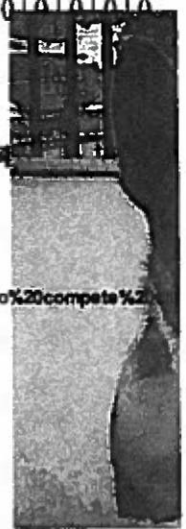
Over the past few years, the metal boxes from those organizations have popped up, like weeds, in parking lots throughout Onondaga County.

First it was PlanetAid, a nonprofit that offers no services in Central New York. Then, in October, USAgain, a for-profit company based in Chicago, moved into the Syracuse market.

The parking lot bins - open any day, any time - might be more convenient for closet cleaners than the Rescue Mission's staffed donation centers. But dropping used clothes in those bins does nothing to help people locally, Chappell said.

"All of that product goes out of our community," Chappell said. "It does nothing to help people here."

The Rescue Mission serves 800 meals daily in Syracuse and its emergency shelter offers 132 beds nightly.



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Crime dat

The 2 million pounds of clothing collected annually by the Rescue Mission to fund those efforts and others are a small part of a massive export business. According to the U.S. Department of Commerce, the U.S. exported 848,000 tons of used clothing to other countries in 2012.

Some of the clothes are turned into rags and cleaning cloths, said Paul Bailey, of SMART, a trade organization of for-profit textile recyclers. The rest get exported to poorer nations and resold.

(<http://top/tag/Crime/index.htm>)
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Photo o



Bob Bailey, a driver for the Rescue Mission places a new clothing donation bin in the parking lot at Kinloch Commons in Manlius.

David Lessman | dlessman@syracuse.com

The Rescue Mission is fighting to keep its foothold in the local market and its source of funding for the services it provides to the poor and homeless in Central New York. To do that, the organization in late October installed three red collection bins in area parking lots and is looking for sponsors for at least three more, Chappell said. The bins cost \$1,250.

PlanetAid's 50 collection boxes in parking lots in Onondaga

County bring in 250,000 pounds of donated clothes annually, said Wayne Michaud, the organization's manager in the northeast.

Michaud said PlanetAid, a nonprofit, sells those clothes and uses the money to help struggling communities in Africa. Last year, it brought in \$38.5 million from selling used clothes, according to tax filings.

CharityWatch (<http://www.charitywatch.org/>), a national philanthropy watchdog, has given PlanetAid its lowest possible grade: an "F." Stephanie Kalivas, an analyst at CharityWatch, said PlanetAid spends only 27 percent of its budget on programs. To get the highest rating from CharityWatch, an organization should spend 75 percent or more on programs.

CharityWatch has taken PlanetAid to task in several **articles** (<http://www.charitywatch.org/articles/PlanetAidRecyclingDebunked.html>) for how it spends its money.

The Rescue Mission was not rated by CharityWatch, which focuses on national



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organizations. But the organization received four out of five stars from Charity Navigator, a different charity rating organization.

But Michaud, of PlanetAid, said his group's secondary goal is to promote recycling. If that is factored in, the fundraising expense is lower. He said the average person throws away 68 pounds of clothing every year.

PlanetAid strives to collect as many of those 68 pounds as possible both to further the cause and to also reduce these items ending up in landfills," Michaud said.

The other company competing for Central New York's used clothes is USAgain. It has 40 collection boxes in Onondaga County. It is a for-profit clothing recycling company.

The company so far has collected a little less than 3,000 pounds in Onondaga County, but its bins have only been here for three months and have the potential to haul much more out of Central New York.

Last year, USAgain collected 58 million pounds of used clothing from its 10,000 collection bins in 17 states.

Chappell hopes Central New Yorkers realize the benefit of giving old clothes to The Rescue Mission.

"Any time anything is taken out of the market that would have come to the Rescue Mission, that is less clothing we can provide, less meals we can provide, less shelter stays, less housing that we can provide," Chappell said.

Contact Marnie Eisenstadt at meisenstadt@syracuse.com (<mailto:meisenstadt@syracuse.com>) or 315-470-2246.

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3AW - Fairfax Radio Network

Public fooled by business bins

Posted by: Fenella Wagener | 13 January, 2014 - 10:54 AM



A salvos spokesman says people need to read the labels on charity bins more carefully amid reports four out of five bins are not for charity.

Salvos stores chief executive Allen Dewhirst told Neil Mitchell they have removed most of their bins because people were unknowingly donating to businesses rather than charities.

He said most of the bins were for commercial exporting, claiming it's now "at least" a \$100 million business.

"Over the past five years commercial people have realised that there's a lot of money to be made in shipping clothing overseas," he said.

"People don't read anything on a bin, they just assume it's going to charity.

"We've taken most of our bins away because we don't get good value from them. We try and encourage people to bring the goods into our stores."

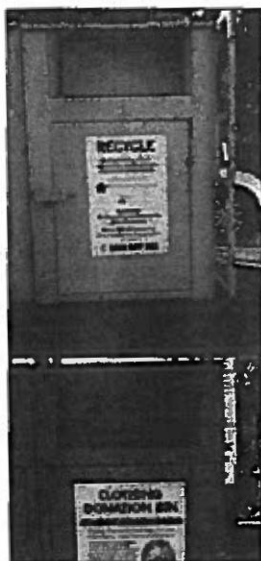




Image: Can you spot the difference?

Mr Dewhirst said he believed only one in 50 people would actually bother to read a bin's label.

He added the commercial bins now read 'to help others' rather than 'your donation is going to charity'.

"The clothing going to Africa or Malaysia is not being given away to people in need - they're being sold," he said.

LISTEN: [Click here for the full interview with Alan Dewhirst and Neil Mitchell](#)

It comes as a report in the *Herald Sun* today claimed of the 1,350 donation bins around Victoria, 1,100 are run by commercial operators.

The Neil Mitchell program sent producer Michael Hilder to the corner of Coventry and Clarendon Streets at South Melbourne where he found eight bins.

Michael Hilder told Neil Mitchell of the eight bins, four were for SIDS, the other four were for a company called Southern Cross Recycling.

"It's quite hard to tell the difference between the two unless you read the fine print, they're a company that's in Thomastown," he said.

"There's a number on the bin, I've called it, and I got a message saying 'if there's something out of the bin that's obstructing the road or a path, call this mobile number', but there was nothing beyond that."

He told Neil Mitchell people think when they're donating things into the bins, they're donating to charity.

"I just saw a gentleman who was putting donations into the SIDS bin, and I asked him afterwards 'why didn't you put it into the other bins?' and he said 'look, I just like the colour blue but they're all going to a good cause'."

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Blog comments

YOUR SAY 

- Can't people take responsibility and read anymore? We had one caller to 3AW say he put it in one bin rather than the other because he liked the colour of the bin! He doesn't care where they go.

We can't spoonfeed everyone. Do we have to have a sign on every shop to say they are commercial enterprises and not charity shops?

If you care simply read the sign. If it's not a charity, it's not a charity!

Jane Tuesday 14 January, 2014 - 12:16 PM

- Salvo's removing their bins will mean still less clothing being donated. More bins means less is placed outside on the ground for others to go through and pinch, that would be a far greater idea. Being fussy about what they take is also a put off for donators, all things donated are at no cost to the salvos, so all good stuff is profit. OK, they have to spend some costs on getting rid of the unrequired items but all business's have rubbish costs. Being wise in how they recycle the unwanted goods is something they should (if they don't already do) look into. My Wife and I run our church op-shop and recycle a large percentage of unsaleable items. A large number of people who donate to us say that they would not take the donations to the salvos as they are more like a retail store than an op-shop by the high cost of their goods. In bygone years they provided low cost items to the needy, this is a thing of the past

mike Monday 13 January, 2014 - 5:26 PM

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**Testimony to the House Committee on Consumer Protection and Commerce
Representative Angus McKelvey, Chair
Representative Derek Kawakami, Vice Chair
Wednesday, February 5, 2014 at 2:10 p.m.
Conference Room 325
HB 2244 - Relating to Charitable Solicitation**

Dear Chair McKelvey, Vice Chair Kawakami, and members of the committee:

On behalf of the Hawai'i Alliance of Nonprofit Organizations, I would like to offer our comments regarding **HB 2244**, which addresses various issues related to charitable solicitation, collection bins for donated items, commercial co-venturers, and nonprofit registration requirements.

Hawai'i Alliance of Nonprofit Organizations (HANO) is a statewide, sector-wide professional association for nonprofits. Our mission is to unite and strengthen the nonprofit sector as a collective force to improve the quality of life in Hawai'i. Our member organizations provide essential services to every community in the state.

Our comments are as follows:

- **Section 4 regarding commercial co-venturers – thirty day reporting deadline and \$1,000 fine.** We support strong measures for accountability, but we also want to ensure that we do not create disincentives for those interested in engaging in co-ventures to support worthy causes. We are concerned that the proposed thirty days reporting deadline is very rapid turnaround in the case of a large scale community effort or for an effort with limited staff/volunteers. Furthermore, we are concerned that the high \$1,000 fine for each violation may be intimidating for those looking to engage in a co-venture effort.
- **Section 6 regarding filing fees – eliminating the filing fee for organizations with revenue under \$25,000.** We support this change as it may encourage additional small organizations to file. With more organizations filing, the state will have more data about Hawaii's nonprofit sector.

Thank you very much for your consideration.

Mahalo,

Lisa T. Maruyama
President and CEO