



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

S.B. NO. 2812, S.D.1, RELATING TO CHARITABLE SOLICITATION.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Thursday, February 25, 2016 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.** For more information, contact Hugh R. Jones, Deputy Attorney General at 586-1473.

Chair Tokuda and Members of the Committee:

The Department of the Attorney General supports the passage of this measure. The purposes of this bill are to amend Hawaii's Charitable Solicitation and Registration law to make the following amendments: (1) clarify that persons are not subject to registration requirements applicable to professional fundraising counsels, solely by virtue of the fact that they assist in preparing grant applications; (2) require registered professional solicitors to make certain affirmative disclosures in the course of solicitation to ensure that potential donors know they are being contacted by a paid solicitor and to prevent donor confusion; (3) authorize the Attorney General to require the electronic submission of end of solicitation campaign financial reports by professional solicitors and to authorize a late filing fee for the late submission of such reports; (4) re-describe as a "late fee" what is currently labeled as a fine for the late submission of a written consent form by a commercial co-venturer; (5) re-describe as a "late fee" what is currently labeled as a fine for the late submission of a registered charity's annual financial report; and (6) amend the exemptions to the requirement that a charity register with the Attorney General to add another institution that accredits educational institutions and certain licensed health care institutions.

1. Clarification Regarding Professional Fundraising Counsels (PFCs)

PFCs generally provide advice and counsel or material with respect to a charity's fundraising activities but do not actually solicit donations or have custody of funds. The bill proposes to amend the definitions "professional fundraising counsel" and "solicit" to make clear that a person is not a PFC (and required to register) solely because they are compensated to

engage in grant writing services for a charity or the submission of a grant to a government agency or charitable organization.

1. Affirmative Disclosures by Professional Solicitors.

As a result of an investigation of a professional solicitor for the Hawaii Police Athletic Federation (HPAF), the Attorney General discovered that Hawaii's charitable solicitation law could be improved by requiring a professional solicitor to disclose at the outset of any solicitation that the person is a professional solicitor and is being paid to make contact with the donor. Donors to HPAF were led to believe by its professional solicitor that it was actually HPAF that was contacting them directly, and not the solicitor. Meanwhile, the solicitor kept 80 percent of all contributions to HPAF. The affirmative disclosures included in this bill are modeled after disclosure requirements in many other states including, Massachusetts, Florida, Illinois, Ohio, Connecticut, Colorado, New York, Washington, Pennsylvania, South Carolina, New Hampshire, New Mexico, Kentucky, Virginia, Mississippi, Maryland, California, Tennessee, Vermont, and Arkansas. These affirmative disclosures will require professional solicitors to be more transparent and will prevent donor confusion and possible deceptive practices.

3. Electronic Submission of End of Solicitation Campaign Financial Reports.

Section 3 of this bill provides for the electronic submission of the financial reports that professional solicitors are required to submit to the Attorney General at the end of a solicitation campaign that the professional solicitor has conducted on behalf of a charity. chapter 467B, Hawaii Revised Statutes (HRS), presently provides for electronic registration by charitable organizations that must register with the Attorney General.

In April 2015, the Department of the Attorney General deployed an Internet based registration and registration renewal system (System) for professional solicitors and professional fundraising counsels. The System processes registrations and renewals, allows registered fundraisers to submit contracts, and allows registered professional solicitors to submit their end of solicitation campaign financial reports electronically as well. This System provides for more robust public access to information that is submitted by registered fundraisers that used to be submitted in paper form and then compiled on the Attorney General's website.

Section 3 of the bill also creates an initial \$100 late fee for the late submission of a required financial report plus \$20 per day the violation continues and provides for a waiver of the late fee upon a showing of reasonable cause.

Finally this section of the bill requires the professional solicitor to provide a copy of the financial report to its client charitable organization within 10 days of its submission.

4. Commercial Co-Venturer Amendments.

Section 4 of the bill re-describes what is currently labeled as a “fine” to a late fee for the late submission of a written consent form by a commercial co-venturer (a business that uses a charity’s name to sell a product or service with the promise that a portion of the sale will benefit a charity).

5. Late Fee for Late Submission of Annual Financial Reports by Registered Charities.

Professional advisors for registered charities have requested the Attorney General to amend chapter 467B, HRS, to re-describe what is currently labeled as a “fine” for the late submission of a charity’s annual financial report as a “late fee.” This is because charities that register in other states must annually report whether they have been subject to any disciplinary action by another jurisdiction. The bill proposes to amend section 467B-6.5, HRS, to call this fee a “late fee.”

6. Clarification of Exemptions from Registration

Section 467B-11.5, HRS, exempts educational institutions accredited by certain recognized accrediting agencies. This bill proposes to amend this section to include, as an additional accrediting agency, the Northwest Accreditation Commission for primary and secondary schools. The bill also proposes to amend the exemption for nonprofit hospitals to include adult day health centers, hospice and intermediate care facilities, and skilled nursing facilities that are licensed or Medicare certified.

The Attorney General respectfully requests the Committee’s favorable consideration of this measure.



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February 23, 2016

To: Senate Committee on Ways and Means
Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair

RE: SB 2812, SD 1 Relating to Charitable Solicitation – **SUPPORT**
Hearing: Thursday, January 25, 2016; Room 211; 9:30 PM

Honorable Chair Jill N. Tokuda and Committee Members:

Aloha United Way **supports** SB 2812, SD 1 which improves HRS Chapter 467B by making reporting requirements more consistent and appropriate to the size of the nonprofit.

Nonprofit funding spent on reporting is not being spent on the nonprofit's mission to improve the quality of life in our community. There is a delicate balance between collecting the information required to govern the operation of nonprofits and the costs associated with providing the reports. Then changes envisioned in SB 2812, SD 1 make appropriate adjustments to the reporting requirements while preserving the Attorney General's mandate to gather adequate information to monitor and evaluate the agency's performance.

Thank you for the opportunity to submit testimony. We urge your favorable consideration of SB 2812 SD 1.

Sincerely,

Cindy Adams
President & Chief Executive Officer