



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2812, S.D. 2, RELATING TO CHARITABLE SOLICITATION.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE AND
HOUSE COMMITTEE ON JUDICIARY

DATE: March 23, 2016

TIME: 2:10 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General or
Hugh R. Jones, Deputy Attorney General

Chairs McKelvey and Rhoads and Members of the Committees:

The Department of the Attorney General (the "Department") supports the passage of this measure with amendments noted below. This bill is the companion bill to H.B. No. 2283, H.D. 1, which passed out of the House Committee on Consumer Protection and Commerce on February 19, 2016. Additionally, some of the provisions in this bill were contained in S.B. No. 1067, S.D. 2, H.D. 1, which was carried over from the 2015 legislative session and was passed out of the House Committee on Judiciary on February 2, 2016. H.B. No. 2283, H.D. 1, and S.B. No. 1067, S.D.2, H.D. 1, did not make the first crossover deadline.

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) provide for the electronic submission of end of solicitation campaign financial reports by professional solicitors to the Department and 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) clarify that an application for exemption must be submitted and approved by the Department,

add another educational accrediting institution, and expand the “licensed hospital” exemption category to other licensed or medicare certified health care institutions. An explanation regarding the basis for the current proposed changes contained in this bill was provided in the Department’s testimony submitted for the February 25, 2016 hearing before the Senate Committee on Ways and Means.

The Department respectfully requests that the Committees amend the bill to include the following amendments, which were included in S.B. No. 1067, S.D. 2, H.D. 1, that passed out of the Senate Committees on Judiciary and Labor, on Commerce and Consumer Protection, and on Ways and Means during the 2015 legislative session, crossed over to the House, and passed out by the House Committee on Judiciary this session. The Hawaii Alliance of Nonprofit Organizations, the Association of Fundraising Professionals, and others in the nonprofit sector submitted testimony on S.B. No. 1067 in the various committee hearings in support of these amendments. The text of the proposed amendments is attached to this testimony and includes the following:

A. Insert in the bill an amendment to section 467B-2.1, HRS, which makes clear that charitable organizations that do not solicit contributions are not subject to registration. This would include most private foundations and endowed charities.

B. Delete the current section 4 of this bill and replace it with the proposed new section 4 wording. The additional proposed amendments amend section 467B-5.5, HRS, to require an accounting to each charity by a commercial co-venturer no more than 90 days after any charitable sales promotion, authorizes the Department to issue cease and desist orders to commercial co-venturers who are in violation of the requirements applicable to commercial co-venturers, and to impose civil penalties for violations. The Department currently has the authority to issue cease and desist orders for violations by registered charities and professional fundraisers. The additional proposed amendments also provide for the electronic submission of the consent forms signed by both the charity and the commercial co-venturer memorializing the agreement between the charity and the commercial co-venturer with respect to the charitable sales promotion.

C. Delete existing section 5 of this bill and replace it with the proposed new section 5 wording. The additional proposed amendments clarify that every registered charity must

submit an annual report to the Department and modify the due date by which a registered charity's annual financial report is due to the Department. Under the current law, a registered charity's annual financial report is due to the Department on the same day that the charity files its annual information return with the IRS. The proposed additional amendment allows the charity to submit its annual financial report with the Department within 10 days after it has been filed with the Internal Revenue Service.

The additional proposed amendments also clarify that a registered charity must submit an audited financial statement annually if its contributions exceed \$500,000. Presently the audit "threshold" is tied to gross revenues. This change will spare many registered charities the significant expense of conducting audits based on the fact that under chapter 467B, HRS, the definition of "contribution" does not include amounts received for membership dues, government grants, or grants from other organizations that have tax exempt status under section 501(c)(3) of the Internal Revenue Code.

Finally, the additional proposed amendments repeal the \$10 annual fee for registered charities with under \$25,000 in gross revenues. The Department hopes this change will serve as an incentive for charities that might otherwise qualify for exemption to register because annual financial reporting would be without cost.

D. Delete the current section 6 of this bill and replace it with the proposed new section 6 wording. The additional proposed amendments clarify that a charity must apply for and be granted an exemption from registration and also add one more accrediting agency to the exemption for accredited educational institutions. The proposed amendments also remove the expansion of the "licensed hospital" exemption category that had been originally included in S.B. No. 2812. The Department would like to give further consideration as to whether to expand this exemption category.

The last additional proposed amendment to section 467B-11.5, HRS, provides for the electronic submission of exemption applications. In April of 2015, in an effort to further the Department's efforts to convert all charitable filings to a paperless system and streamline the exemption from registration application process, the Department launched an online module that allows charities eligible for a registration exemption to submit an exemption application electronically.

We respectfully request the Committees' favorable consideration of this measure with the amendments noted herein.

REQUESTED PROPOSED AMENDMENTS TO SB NO. 2812, S.D. 2

1. Add the following to the bill as a new section 3 and renumber all existing sections of the bill as needed:

SECTION 3. Section 467B-2.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every public benefit corporation domiciled in Hawaii and every charitable organization not exempted by section 467B-11.5 shall register with the department prior to conducting any solicitation of contributions or prior to having any solicitation of contributions conducted on its behalf by others. Two authorized officers of the charitable organization shall sign the registration form and shall certify that the statements therein are true and correct to the best of their knowledge subject to penalties imposed by section 710-1063. A central or parent organization that has received a group exemption letter from the Internal Revenue Service may submit a consolidated application for registration [~~may, at the option of the charitable organization, be submitted by a parent organization~~] for itself and any or all of [~~its related foundations, supporting organizations, chapters, branches, or affiliates in this State.~~] the

subordinate organizations covered under the group exemption that are included in the central or parent organization's annual information return to the Internal Revenue Service."

2. Delete the existing section 4 and replace it with the following:

SECTION 4. Section 467B-5.5, Hawaii Revised Statutes, is amended to read as follows:

"§467B-5.5 Commercial co-venturer's charitable sales promotions. (a) All charitable sales promotions by a commercial co-venturer shall disclose the name of the commercial co-venturer.

(b) Prior to the commencement of any charitable sales promotion in this State conducted by a commercial co-venturer using the name of a charitable organization, the commercial co-venturer shall obtain the written consent of the charitable organization whose name will be used during the charitable sales promotion. The commercial co-venturer shall file a copy of the written consent with the department not less than ten days prior to the commencement of the charitable sales promotion within this State. An authorized representative of the charitable organization and the commercial co-venturer shall sign the written

consent, and the terms of the written consent shall include the following:

- (1) The goods or services to be offered to the public;
- (2) The geographic area where, and the starting and final date when, the offering is to be made;
- (3) The manner in which the name of the charitable organization is to be used, including any representation to be made to the public as to the amount or per cent per unit of goods or services purchased or used that is to benefit the charitable organization;
- (4) A provision for a final accounting on a per unit basis to be given by the commercial co-venturer to the charitable organization and the date when it is to be made~~[+]~~, which date shall be no more than ninety days after the end of the charitable sales promotion; and
- (5) The date when and the manner in which the benefit is to be conferred on the charitable organization.

(c) A final accounting for each charitable sales promotion shall be prepared by the commercial co-venturer

following the completion of the promotion. A copy of the final accounting shall be provided to the attorney general not more than twenty days after the copy is requested by the attorney general. ~~[A copy of the final accounting shall be provided to the charitable organization not more than twenty days after the copy is requested by the charitable organization.]~~ The final accounting shall be kept by the commercial co-venturer for a period of three years, unless the commercial co-venturer and the charitable organization mutually agree that the accounting should be kept by the charitable organization instead of the commercial co-venturer.

(d) A ~~[fine]~~ late filing fee of \$20 shall be imposed on a commercial co-venturer who fails to file a written consent as required by subsection (b), unless it is shown that the failure is due to reasonable cause, for each day during which the violation continues; provided that the total amount imposed under this subsection shall not exceed \$1,000.

(e) The consent shall be signed by the authorized representative of the commercial co-venturer and the charitable organization certifying that the statements made therein are true and correct to the best of their knowledge

subject to penalties imposed by section 710-1063. The attorney general may require the written consent to be submitted electronically and may require the use of electronic signatures.

(f) The attorney general may issue a cease and desist order whenever the attorney general finds that a commercial co-venturer has engaged in an act or practice that violates this chapter.

(g) When the attorney general finds that a commercial co-venturer has violated or is operating in violation of this chapter, the attorney general may impose an administrative fine not to exceed \$1,000 for each act that constitutes a violation of this chapter and an additional penalty, not to exceed \$100 per day, for each day during which the violation continues. Any person aggrieved by an action of the attorney general under this section may request a hearing to review that action in accordance with chapter 91 and rules adopted by the attorney general. Any request for hearing shall be made within ten days after the attorney general has served the person with notice of the action, which notice shall be deemed effective upon mailing."

3. Delete the existing section 5 in its entirety and replace it with the following:

SECTION 5. Section 467B-6.5, Hawaii Revised Statutes, is amended to read as follows:

"§467B-6.5 Annual financial reports; fiscal records and fees. (a) Every registered charitable organization [~~required to register pursuant to section 467B-2.1~~] shall annually file with the department a report for its most recently completed fiscal year. If the charitable organization files a Form 990 or 990-EZ with the Internal Revenue Service, the annual report shall be a copy of that Form 990 or 990-EZ. If the registered charitable organization is required to file a Form 990-T with the Internal Revenue Service, the annual report shall include a copy of that Form 990-T. If a charitable organization is not required to file a Form 990 or 990-EZ with the Internal Revenue Service, the annual report shall contain all information prescribed by the department. [~~The charitable organization shall file its annual report not later than the fifteenth day of the fifth month following the close of its fiscal year.~~] The annual report for a charitable organization that files a Form 990 or 990-EZ shall be electronically submitted to the department within ten business days of the date that the organization files the

form with the Internal Revenue Service. The annual report for a charitable organization that files a Form 990-N or that is not required to file a Form 990 or 990-EZ shall be electronically submitted to the department not later than the fifteenth day of the fifth month following the close of its fiscal year. An authorized officer or agent of the charitable organization shall sign the annual report and shall certify that the statements therein are true and correct to the best of the officer's knowledge subject to penalties imposed by section 710-1063. A charitable organization that has obtained an extension of time to file a Form 990 or 990-EZ from the Internal Revenue Service [~~may obtain an extension of time to file the annual report with the department, by filing with the department a copy of the Internal Revenue Service's approved extension of time to file.~~] shall provide a copy to the attorney general not more than twenty days after the copy is requested by the attorney general. The annual report shall be accompanied by a filing fee as prescribed by subsection (d). The department shall accept, under conditions prescribed by the attorney general, a copy or duplicate original of financial statements, reports, or returns filed by the charitable organization with the Internal Revenue Service or another

state having requirements similar to the provisions of this section; provided that the attorney general may prescribe the form of the annual financial report for charitable organizations that file the Form 990-N with the Internal Revenue Service, or who are not required to file a Form 990 or 990-EZ with the Internal Revenue Service."

(b) A charitable organization with [~~gross revenue~~] contributions in excess of \$500,000 in the year covered by the annual financial report and a charitable organization required to obtain an audit report by a governmental authority or a third party shall include with its annual financial report, an audit report, prepared in accordance with generally accepted accounting principles, by a certified public accountant [~~; provided that any charitable organization shall include with its annual financial report an audit report, prepared in accordance with generally accepted accounting principles, by a certified public accountant if required to do so by a governmental authority or a third party. For the purpose of this subsection, "gross revenue" does not include grants or fees from government agencies or revenue derived from funds held in trust for the benefit of the organization~~].

(c) The department, upon written request and for good cause shown, may grant an extension of time, not to exceed three months, for the filing of the annual report required by this section.

(d) Each charitable organization filing a report required by this section shall pay a filing fee to the department based on the total amount of its gross revenues during the time covered by the report at the close of the calendar or fiscal year adopted by the charitable organization as follows:

- (1) [~~\$107~~] \$0, if less than \$25,000;
- (2) \$25, if \$25,000 but less than \$50,000;
- (3) \$50, if \$50,000 but less than \$100,000;
- (4) \$100, if \$100,000 but less than \$250,000;
- (5) \$150, if \$250,000 but less than \$500,000;
- (6) \$200, if \$500,000 but less than \$1,000,000;
- (7) \$250, if \$1,000,000 but less than \$2,000,000;
- (8) \$350, if \$2,000,000 but less than \$5,000,000; or
- (9) \$600, if \$5,000,000 or more.

(e) If a return, report, or filing fee required under this section is not filed or paid, taking into account any extension of time for filing, unless it is shown that the failure is due to reasonable cause, a [~~fine~~] late fee 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.

(f) Every charitable organization subject to section 467B-2.1 and this section shall keep true fiscal records that shall be available to the department for inspection upon request. The organization shall retain the records for no less than three years after the end of the fiscal year to which they relate.

(g) The attorney general may require the annual financial report and audit report required by subsections (a) and (b) to be electronically submitted and to include electronic signatures."

4. Delete the existing section 6 in its entirety and replace it with the following:

SECTION 6. Section 467B-11.5, Hawaii Revised Statutes, is amended to read as follows:

"§467B-11.5 Charitable organizations exempted from registration and financial disclosure requirements. The following charitable organizations shall not be subject to sections 467B-2.1 and 467B-6.5, if the organization submits ~~[information as the department may require to substantiate an exemption under this section:]~~ an application for an

exemption to the department and the department approves the organization's application:

- (1) Any duly organized religious corporation, institution, or society that is exempt from filing Form 990 with the Internal Revenue Service pursuant to sections 6033(a)(3)(A)(i) and (iii) and 6033(a)(3)(C)(i) of the Internal Revenue Code, as amended;
- (2) Parent-teacher associations;
- (3) Any educational institution that is licensed or accredited by any of the following licensing or accrediting organizations:
 - (A) Hawaii Association of Independent Schools;
 - (B) Hawaii Council of Private Schools;
 - (C) Western Association of Schools and Colleges;
 - (D) Middle States Association of Colleges and Schools;
 - (E) New England Association of Schools and Colleges;
 - (F) North Central Association of Colleges and Schools;
 - (G) Northwest Commission on Colleges and Universities;

(H) Southern Association of Colleges and
Schools; [~~or~~]

(I) The National Association for the Education
of Young Children; or

(J) The Northwest Accreditation Commission for
primary and secondary schools;

and any organization exempt from taxation under
section 501(c)(3) of the Internal Revenue Code
expressly authorized by, and having an
established identity with[~~, such~~] an educational
institution[~~+~~] accredited by one of the foregoing
accrediting agencies; provided that the
organization's solicitation of contributions is
primarily directed to the students, alumni,
faculty, and trustees of the institutions and
their respective families;

(4) Any nonprofit hospital licensed by the State or
any similar provision of the laws of any other
state;

(5) Any corporation established by an act of the
United States Congress that is required by
federal law to submit to Congress annual reports,
fully audited by the United States Department of

- Defense, of its activities including itemized accounts of all receipts and expenditures;
- (6) Any agency of this State, another state, or the federal government; and
- (7) Any charitable organization that normally receives less than \$25,000 in contributions annually, if the organization does not employ or compensate a professional solicitor or professional fundraising counsel. For purposes of this paragraph, an organization normally receives less than \$25,000 in contributions annually if, during the immediately preceding three fiscal years, it received, on average, less than \$25,000 in contributions.

The attorney general may require the application for exemption to be filed electronically with the department and may require the use of electronic signatures."



**Testimony to the House Committee on Consumer Protection & Commerce
Representative Angus McKelvey, Chair; Representative Justin Woodson, Vice-Chair
Judiciary Committee
Representative Karl Rhoads, Chair; Representative Joy San Buenaventura, Vice Chair
Wednesday March 23, 2016, 2:10 p.m.
Conference Room 325
SB 2812 SD 2 - Relating to Charitable Solicitation**

Dear Chair McKelvey, Chair Rhoads, and members of the CPC and Judiciary Committees:

On behalf of the Hawai'i Alliance of Nonprofit Organizations, I would like to offer our comments in **support of SB 2812, SD 2** relating to charitable solicitation.

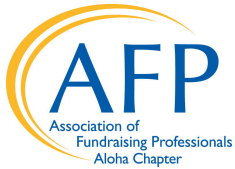
Hawai'i Alliance of Nonprofit Organizations (HANO) is a statewide, sector-wide professional association of nonprofits. Our mission is to unite and strengthen the nonprofit sector as a collective force to improve the quality of life in Hawai'i. Our member organizations provide essential services to every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

HANO supports this measure because it improves and clarifies the charitable solicitation law and makes filing simpler for charitable organizations. HANO supports the suggested changes by the Attorney General, which incorporates language from SB 1067, SD 2, HD 1, which did not make crossover. HANO supports several additions in particular:

- Filing fees: SB 1067 reduced the annual filing fee from \$10 to \$0 for small organizations (under \$25,000 in annual revenue). This change would encourage additional small organizations to file reports instead of filing for exemptions. With more organizations filing reports, the state will have more data about Hawaii's nonprofit sector.
- Extend filing deadlines for charitable organizations with the Attorney General's charitable registry to 10 days after filing 990 tax forms with the Internal Revenue Service.
- Changing reference to "fines" in several parts of the chapter to "late fees"
- Audited financial reports: SB 1067 required audited financial reports for organizations with contributions (instead of gross revenues) over \$500,000. Audited financial reports prepared by CPAs are extremely costly, and represent a major burden for smaller nonprofits. Furthermore, they may be unnecessary for many smaller nonprofits with relatively uncomplicated financial structures. This change will relieve many small to medium nonprofits from the burden of this expense. Please note that nonprofits will still be subject to other reporting requirements, including submitting their IRS Form 990 that includes extensive financial and governance disclosures.

Thank you for the opportunity to provide written testimony.

Lisa Maruyama, President and CEO



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Wednesday, March 23, 2016– 2:10 pm
Conference Room 325

The House Committee on Consumer Protection

To: Representative Angus McKelvey, Chair
Representative Justin Woodson, Vice-Chair

The House Committee on Judiciary

Representative Karl Rhoads, Chair
Representative Joy San Buenventura, Vice Chair

From: S. Sanae Tokumura, ACFRE, APR
President

**Re: SB 2812 SD2, Relating to Charitable Solicitation
Testimony in Support**

My name is Sanae Tokumura, President of the Association of Fundraising Professionals – Aloha Chapter (AFP Aloha Chapter). The AFP Aloha Chapter advances philanthropy throughout Hawaii by actively promoting the practice of ethical and effective fundraising. We are committed to education, training, advocacy, and mentoring in the field of fundraising for the benefit of all, with the spirit of aloha. Founded in Hawaii in 1983, the Association of Fundraising Professionals (AFP) Aloha Chapter is a professional association whose membership is comprised of persons involved in non-profit development, non-profit management and fundraising consulting. The chapter members represent organizations on Oahu, Maui, Kauai and the Big Island. .

We support SB 2812 SD2 which amends Hawaii's charitable solicitation law to: require affirmative disclosures to donors by professional solicitors; clarify exemptions from registration; and make other technical amendments.

We support all regulatory efforts that enable the Attorney General to ensure transparency to protect consumers from fraudulent fundraising solicitation activities. Currently, Hawaii does not require paid professional solicitors to inform donors at the outset that the person or entity is being paid to make the donor contact. As such, paid professional solicitors are allowed to use deceptive practices to entice potential donors to give money. Requiring such disclosures by paid professional solicitors not only protects donors, but also enables them to make informed decisions about whether or not to make a contribution.

We additionally support the amendments proposed by the Attorney General.

Thank you for the opportunity to testify.

TO: Members of the Committees on Consumer Protection & Commerce
and Judiciary

FROM: Natalie Iwasa, CPA, CFE
Honolulu, HI 96825
808-395-3233

HEARING: 2:10 p.m. Wednesday, March 23, 2016

SUBJECT: SB 2812, SD2, Charitable Solicitation **Support Section 1 and
Amendment Requested**

Aloha Chairs and Committee Members,

Thank you for allowing me the opportunity to provide testimony on SB2812, SD2, which amends Hawaii's charitable solicitation law.

The intent behind our charity solicitation and registration law was to reduce abuses that were occurring and to help the public obtain information about charities and solicitors prior to making donations. Many nonprofit organizations hire professional grant writers to assist in obtaining grants. They often do not solicit donations directly from the public. I therefore support the amendment in Section 1 that removes grant writers from the requirements of registration as solicitors.

Another part of this law requires certain charitable organizations to register with the Attorney General's office and have an annual audit if their "gross revenue" exceeds \$500,000. Two of my clients receive grants from one charitable organization in excess of \$400,000 annually, and that puts them over the current threshold for the audit requirement. Neither organization receives more than \$50,000 directly from the public.

SB 1067, SD2, HD1 addressed the issue of intent to audit organizations that receive substantial donations from the public and amended the definition of "gross revenue" for audit purposes to include only contributions. (Contributions as defined in HRS Sec.467B-1 do not include grants from other 501(c)(3) organizations.) This bill passed the House Judiciary Committee this session. Please amend SB2812, SD2, to include the following:

(b) A charitable organization with ~~[gross revenue]~~ contributions in excess of \$500,000 in the year covered by the annual financial report and a charitable organization required to obtain an audit report by a governmental authority or a third party shall include with its annual financial report, an audit report, prepared in accordance with generally accepted accounting principles, by a certified public accountant~~[- provided that any charitable organization shall include with its annual financial report an audit report, prepared in accordance with generally accepted accounting principles, by a certified public accountant if required to do so by a governmental authority or a third party. For the purpose of this subsection, "gross revenue" does not include grants or fees from government agencies or revenue derived from funds held in trust for the benefit of the organization].~~