



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

S.B. NO. 2748, S.D. 2, RELATING TO CHARITABLE ORGANIZATIONS.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Wednesday, March 14, 2018 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Stacie M. Nakamura, Deputy Attorney General

Chair Takumi and Members of the Committee:

The Department of the Attorney General (Department) supports this bill. This bill amends Hawaii's charitable solicitation and registration law, chapter 467B, Hawaii Revised Statutes (HRS). We request that the bill be passed with the amendment noted below.

Specifically, this bill will (1) replace the terms "gross receipts" and "gross revenue" with "total receipts" and "total revenue" to be consistent with the Internal Revenue Service (IRS) Form 990 terminology, (2) ensure that the public receives timely information about professional solicitation campaigns by clarifying that professional solicitors that conduct solicitation campaigns lasting more than one year must file financial reports annually and file a financial report after the end of the campaign, (3) protect charitable organizations by requiring commercial co-venturers to deliver an accounting and the benefit to the charitable organization for which it is soliciting within ninety days of the end of the promotion and within ninety days of the anniversary of the promotion lasting greater than one year, (4) relieve registered organizations that receive more than \$500,000 in contributions, and that are not required to obtain an audit report by any other party from the requirement to submit an audit report, (5) protect audited financial statements from public disclosure for all charitable organizations, not just charities, and (6) reinsert the Hawaii Council of Private Schools as a licensing or

accrediting organization under section 467B-11.5, HRS. The bill is effective upon approval.

Requested Amendment

S.B. No. 2748, S.D. 2, sections 2 and 3, include amendments that differ from the amendments previously submitted by the Department and included in S.B. No. 2748, S.D. 1. The previous Committee amended sections 2 and 3 of the bill to clarify the dates by which professional solicitors must file financial reports and the dates by which commercial co-venturers must deliver an accounting and confer the benefit to the charitable organization. Although we appreciate the previous Committee's intent to add further clarification to the bill, the revised amendments may instead cause further confusion by sometimes appearing to allow a choice of due dates and may make the statute difficult to understand by using more words than necessary to describe the various due dates. Therefore, we respectfully request that the Committee amend sections 2 and 3 of the bill in accordance with the attached proposed amendments, which mirrors the language in S.B. No. 2748, S.D. 1.

This bill will assist the Attorney General in his oversight of charitable organizations and fundraising activities, will clarify regulatory procedures for the nonprofit sector, and will provide additional disclosures to the public.

We respectfully request that the Committee pass this bill with the requested amendment.

SECTION 2. Section 467B-2.5, Hawaii Revised Statutes, is amended to read as follows:

"§467B-2.5 Professional solicitor financial reports; contribution account. (a) [~~Within ninety days after a solicitation campaign or event has been completed or within ninety days of the anniversary of the commencement of a solicitation campaign lasting more than one year, a~~] A professional solicitor shall file with the attorney general a financial report for [~~the~~] any charitable solicitation campaign, including [~~gross~~] total revenue from Hawaii donors and national [~~gross~~] total revenue and an itemization of all expenses incurred on a form prescribed by the attorney general[~~-~~] as follows:

(1) Within ninety days after a solicitation campaign or event has been completed; and

(2) For any solicitation campaign lasting more than one year, within ninety days after the anniversary of the commencement of the solicitation campaign.

(b) The attorney general may require the financial report required by subsection (a) to be submitted electronically and may require the use of electronic signatures. This report shall be signed by the professional solicitor or by an authorized officer or agent of the professional solicitor who shall certify that the

statements therein are true and correct to the best of the solicitor's, officer's, or agent's knowledge subject to penalties imposed by section 710-1063. If a financial report required under this section is not filed in a timely manner, taking into account any extension of time for filing, unless it is shown that the failure is due to reasonable cause, an initial late filing fee of \$100 shall be imposed, and an additional late filing fee of \$20 per day shall be imposed, for each day during which the violation continues; provided that the total fee amount imposed under this subsection shall not exceed \$1,000. The attorney general may waive all or part of the late filing fee imposed by this subsection if there is a reasonable cause for the failure to timely file. 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.

(c) A professional solicitor shall maintain during each solicitation campaign and for not less than three years after the completion of that campaign the following records, which shall be available for inspection upon demand by the attorney general:

- (1) The date and amount of each contribution received and the name and address of each contributor;
- (2) The name and residence of each employee, agent, or other person involved in the solicitation;
- (3) Records of all revenue received and expenses incurred in the course of the solicitation campaign; and
- (4) The location and account number of each bank or other financial institution account in which the professional solicitor has deposited revenue from the solicitation campaign.

~~[(b)]~~ (d) Any material change in any information filed with the attorney general pursuant to this section shall be reported in writing by the professional solicitor to the attorney general not more than seven days after the change occurs.

~~[(e)]~~ (e) Each contribution in the control or custody of the professional solicitor, in its entirety and within five days of its receipt, shall be deposited in an account at a bank or other federally insured financial institution, which shall be in the name of the charitable organization. The charitable organization shall maintain and administer the account and shall have sole control of all withdrawals."

SECTION 3. Section 467B-5.5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(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]~~ an accounting on a per unit basis ~~[to be]~~, which shall be prepared by the commercial co-venturer and 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, for promotions lasting more than one year, shall be within ninety days after the anniversary of the commencement of the charitable sales promotion and within 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~~[+]~~, which date shall be within ninety days after the end of the charitable sales promotion and, for charitable sales promotions lasting more than one year, shall be within ninety days after the anniversary of the commencement of the promotion and within ninety

days after the end of the charitable sales
promotion.

(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~~] an accounting shall be provided to the attorney
general not more than twenty days after the copy is
requested by the attorney general. [~~The final~~] An
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."



Our Vision: Charitable organizations have the philanthropic resources necessary to fulfill their missions for a better Hawaii.

Our Mission: We advance philanthropy throughout Hawaii by actively promoting the practice of ethical and effective fundraising with education, training, advocacy, and mentoring for the benefit of all, with the spirit of aloha.

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Wednesday, March 14th, 2018 at 2:00pm

Conference Room 329

House Committee on Consumer Protection & Commerce

To: Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice Chair

From: Cathy Alsup, CFRE
President, Association of Fundraising Professionals, Aloha Chapter

Re: SB 2748 SD 2 – Relating to Nonprofit Corporations

My name is Cathy Alsup, CFRE, 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.

The Association of Fundraising Professionals Aloha Chapter supports SB 2748 SD 2 and the multiple amendments it makes to the laws governing the regulation of charitable organizations in Hawai'i. AFP appreciates this measure's proposals that seek to improve and clarify the charitable solicitation law.

SB 2748 clarifies requirements of the reporting process surrounding solicitation campaigns and events, particularly regarding the circumstances under which a commercial co-venturer must provide a charitable organization with an accounting. Additionally, the specific timeframe requirements installed by this measure will help to ensure that charitable organizations report to the Attorney General in a timely fashion so that state-wide records are maintained. Finally, the edits throughout Section 467B of Hawai'i Revised Statutes which update "gross revenue" to "total revenue" greatly clarify the operating and reporting requirements for charitable organizations.

Thank you for the opportunity to testify in support of SB 2748 SD 2. This measure helps to clarify the laws governing charitable organizations and will make it easier for organizations to ensure they are complying with State Law.



TO: The Honorable Roy Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair
House Committee on Consumer Protection and Commerce

FROM: Philip J. Bossert, Executive Director
Hawaii Association of Independent Schools

RE: SB 2748 SD2 - RELATING TO CHARITABLE ORGANIZATIONS
In Support

DATE: Wednesday, March 14, 2018
2:00 pm, Conference Room 329

Aloha Chair Takumi, Vice Chair Ichiyama, and Members of the Committee:

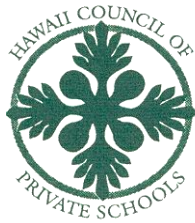
The Hawaii Association of Independent Schools (HAIS) is a membership organization that currently represents 93 of Hawaii's private and independent schools; and, in collaboration with the Western Association of Schools & Colleges (WASC) accredits 51 of those 93 institutions. The other 43 institutions are either licensed by HAIS's subsidiary organization, the Hawaii Council of Private Schools (HCPS) but choose not to be accredited by HAIS/WASC, or they are accredited by some other educational accrediting body, such as those representing Catholic schools, Adventist schools, Christina schools, etc.

In 1995, Act 188 deregulated Hawaii Dept. of Education's (HDOE) licensing of Hawaii private schools. The legislature requested that HAIS form a new subsidiary organization to take over the responsibility from HDOE for licensing of private schools in Hawaii. In a 1998 memorandum of agreement between HDOE and HAIS, HCPS was formed by HAIS to license Hawaii private schools and to ensure that transcripts and credits earned at HCPS-licensed schools would continue to be recognized and accepted as valid for transfer to other educational institutions.

HCPS has performed this licensing function since 1998 and has been included in the Hawaii Office of the Attorney General's list of authorized accrediting and licensing organizations. However, HCPS was inadvertently removed from this list of acknowledged licensing and accrediting agencies, due to the dissolution of HCPS as a not-for-profit corporation and its restructuring as a Limited Liability Corporation.

Thus, HAIS supports SB 2748 SD2 as amended to include HCPS once again as a recognized licensing agency for all private schools in the State of Hawaii.

Thank you.



TO: The Honorable Roy Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair
House Committee on Consumer Protection and Commerce

FROM: Edna L. Hussey, Chair
Hawaii Council of Private Schools

RE: SB 2748 SD2 - RELATING TO CHARITABLE ORGANIZATIONS
In Support

DATE: Wednesday, March 14, 2018
2:00 pm, Conference Room 329

Aloha Chair Takumi, Vice Chair Ichiyama, and Members of the Committee:

The Hawaii Council of Private Schools, LLC, is a subsidiary of the Hawaii Association of Independent Schools. In 1995, Act 188 deregulated HDOE's licensing of Hawaii private schools.

In a 1998 memorandum of agreement between HDOE and HAIS, HCPS was formed by HAIS to license Hawaii private schools and to ensure that transcripts and credits earned at HCPS-licensed schools would continue to be recognized and accepted as valid.

The Hawaii Council of Private Schools (HCPS, LLC) supports SB 2748 SD2 with amendments. There are approximately 80 licensed private schools among nearly 150 schools in Hawaii operating as educational programs. An HCPS-licensed school must meet established licensing criteria, which address safety and health, a viable educational program, facilities, governance, administration, faculty/staff, admissions, and finances. A school must be re-licensed upon the expiration of term of license.

HCPS supports SB 2748 SD2 as amended to include HCPS once again as one of the charitable organizations recognized in section 467B-11.5 of the Hawaii Revised Statutes. Unfortunately, we were inadvertently deleted through Act 86 in last year's 2017 Legislative Session.

Thus, the Hawaii Council of Private Schools, in conjunction with the Hawaii Association of Independent Schools, supports SB 2748 SD2. Thank you for the opportunity to submit testimony.



**Testimony to the House Committee on Consumer Protection and Commerce
Representative Roy Takumi, Chair
Representative Linda Ichiyama, Vice Chair
Wednesday March 14, 2018, 2:00 p.m.
Conference Room 329
SB 2748, SD 2 - Relating to Charitable Organizations**

Dear Chair Takumi, Vice-Chair Ichiyama and members of the CPC Committee:

On behalf of the Hawai`i Alliance of Nonprofit Organizations, I would like express **support of SB 2748, SD 2**, relating to charitable organizations.

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 all changes being made in this bill including changing “gross revenue” to “total revenue,” clarifying when professional solicitors must file financial reports, clarifying when commercial co-venturers must provide the charitable organization with an accounting and the benefit, and eliminating the need for some charitable organizations to provide an audit report.

Thank you for the opportunity to provide written testimony in support of these changes.

Mahalo,
Lisa Maruyama
President & CEO