

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

S.B. NO. 2693, RELATING TO STATES OF EMERGENCY.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL AND
MILITARY AFFAIRS

DATE: Wednesday, January 31, 2024 **TIME:** 3:01 p.m.

LOCATION: State Capitol, Room 225 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Kory W. Young, Deputy Attorney General

Chair Wakai and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

The purpose of the bill is to make the fraudulent solicitation of contributions for disaster relief victims during a state of emergency declared by the governor under section 127A-14(a), Hawaii Revised Statutes, a specific criminal offense of "charitable fraud during a state of emergency."

We note that the new offense does not specify a state of mind for the offense. When a criminal offense does not specifically designate a state of mind, the default state of mind of "intentionally, knowingly, or recklessly" is generally applied. However, it would be helpful in the prosecution of these crimes if the state of mind required to commit these offenses is specified so there is no confusion or ambiguity regarding the intent of the Legislature or how to apply the law. The states of mind could be added on page 1, lines 7 and 8, as follows:

. . . of the governor under section 127A-14(a), the person intentionally, knowingly, or recklessly performs any of the following actions in connection with a solicitation or . . .

Proving intent is often difficult in the prosecution of these cases. On page 1, lines 11 and 12, it would assist in the prosecution of these crimes if the requirement that the misrepresentation be made "with the intent that others rely thereon" be removed.

Because of the difficulty proving what was in the mind of an offender at the time a crime was committed, this element of the offense should be deleted. In cases of fraudulent solicitations of contributions, the fact that the fraudster obtained or sought to obtain contributions based on falsehoods or other misrepresentations will often be simple to prove. However, if a fraudster is able to claim that it was not his/her intent to have others rely on the falsehoods or misrepresentations, and that claim creates a reasonable doubt in the mind of a single juror regarding the fraudster's intentions, the fraudster would not be convicted. Removing the suggested wording would eliminate the opportunity for a fraudster to lie about the intent of the actions.

On page 2, line 8, in subsection (a)(3)(B), in order to broaden the scope of the bill, the word "direct" should be deleted. In situations where fraudsters make a fraudulent claim that the donations are going to the Red Cross, Aloha United Way, or other charitable organizations assisting with the disaster relief but that are not direct victims of the disaster, the courts could interpret the bill's requirement that the solicitation be for "direct aid for disaster victims," as not prohibiting these types of fraudulent solicitations for charitable organizations. Donations to charitable organizations aiding in disaster relief could be viewed as going indirectly to aid the disaster victims, so this type of fraud would arguably not be prosecutable under these offenses. If the word "direct" is removed from subsection (a)(3)(B), then the word "directly" should also be removed from section (a)(3)(C) on page 2, line 10, to remain consistent.

It may also be helpful to define the terms "solicit" and "solicitation" to make it clear what actions and activities fall within the ambit of the bill. We suggest adding the following definition for "solicit" or "solicitation" to be inserted on page 3, line 9:

"Solicit" or "solicitation" means a request directly or indirectly for money, credit or debit card transactions, online payments, payments made through a third party, goods, services, or anything else of value, whether tangible or intangible on the plea or representation that the money, credit or debit card transactions, online payments, payments made through a third party, goods, services, or anything else of value, whether tangible or intangible, or any portion thereof, will be used for disaster relief, to benefit the victims of a disaster, or go to a charitable

organization engaged in assisting the victims of a disaster. A person "solicits," or a "solicitation" occurs, whether or not the person making the solicitation receives any contribution. These terms shall include the following:

- (1) Any oral or written request, or request made by electronic message, electronic mail, blog, post, or any other form of electronic communications;
- (2) The making of any announcement to any organization for the purpose of further dissemination, including announcements to the press, over the radio or television, or by telephone, telegraph, internet, social media, or facsimile, concerning an appeal or campaign by or for disaster relief, to benefit the victims of a disaster, or any charitable organization engaged in assisting the victims of a disaster;
- (3) The distribution, circulation, posting, or publishing of any handbill, written advertisement, or other publication that directly or by implication seeks to obtain public support;
- (4) Where the sale or offer or attempted sale, of any advertisement, advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies, or other tangible item in connection with which any appeal is made for disaster relief, to benefit the victims of a disaster, or any charitable organization engaged in assisting the victims of a disaster; or where the name of any disaster, victim(s) of a disaster, or charitable organization engaged in assisting the victims of a disaster is used or referred to in any appeal as an inducement or reason for making any sale; or where in connection with any sale, any statement is made that the whole or any part of the proceeds from any sale will be used for disaster relief, to benefit the victims of a disaster, or go to a charitable organization engaged in assisting the victims of a disaster; and
- (5) A request made through the use of receptacles for contributions such as honor boxes, vending machines, wishing wells, contribution boxes, and novelty machines, where a charitable appeal is used or referred to or implied as an inducement or reason to contribute.

The Department respectfully asks the Committee to consider our recommended changes. Thank you for the opportunity to provide comments.

SB-2693

Submitted on: 1/28/2024 10:42:19 PM

Testimony for PSM on 1/31/2024 3:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Jacob Wiencek	Testifying for Hawaii Young Republicans	Support	Written Testimony Only

Comments:

Aloha Senators,

On behalf of Hawaii Young Republicans, we support this bill. During a crisis, it is ghastly and inhumane for people to misuse charitable contributions and the promise of charitable aid. Please consider your support for this legislation!

SB-2693

Submitted on: 1/28/2024 7:20:31 PM

Testimony for PSM on 1/31/2024 3:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Julia Estigoy-Kahoonei	Individual	Support	Written Testimony Only

Comments:

I support this bill. Anyone trying to profit from someone else's misfortune should pay the steepest fines allowable. Those who commit such acts need to be stripped of their savings and never be able to commit such fraud ever again

POLICE DEPARTMENT
KA 'OIHANA MĀKA'I O HONOLULU
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HOPE LUNA NUI MĀKA'I

OUR REFERENCE TC-BT

January 31, 2024

The Honorable Glenn Wakai, Chair
and Members
Committee on Public Safety and
Intergovernmental and Military Affairs
State Senate
415 South Beretania Street, Room 225
Honolulu, Hawai'i 96813

Dear Chair Wakai and Members:

SUBJECT: Senate Bill No. 2693, Relating to States of Emergency

I am Thomas Chang, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 2693, Relating to States of Emergency.


Charitable fraud during a state of emergency can cause irreversible impacts to the victim and their community during a time of crisis. The proposed measure will serve as a deterrent to such actions. This measure will strengthen the HPD's ability to combat fraudulent schemes or artifices during a state of emergency.

The HPD urges you to support Senate Bill No. 2693, Relating to States of Emergency.


Thank you for the opportunity to testify.

APPROVED:

Sincerely,



Arthur J. Logan
Chief of Police


Thomas Chang, Captain
Criminal Investigation Division