



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

S.B. NO. 1048, RELATING TO SOLICITATION OF FUNDS FROM THE PUBLIC.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Monday, February 10, 2025 **TIME:** 9:35 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Kristie Cruz Chang, Deputy Attorney General or Eunice Park,
Deputy Attorney General

Chair Keohokalole and Members of the Committee:

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

This bill proposes to amend Act 205, Session Laws of Hawaii 2024 (Act 205), to clarify standards and safeguards in online crowdfunding and change its effective date from January 1, 2026, to June 30, 2026. Enacted in response to concerns over potentially fraudulent online fundraising platforms following the August 2023 Lahaina wildfires, Act 205 improved and expanded the Department's enforcement of charitable fundraising activities, including regulation of charitable fundraising on online platforms. The Department is concerned that certain amendments in this bill may unintentionally exempt certain online fundraising platforms and platform charities from the requirements of Act 205.

Ambiguous Definitions and Potential Loopholes

The bill introduces terms such as "ministerial deficiency" and "minor administrative deficiency" (page 4, lines 7 and 20, and page 5, line 9) without defining them. Under Act 205, charitable organizations deemed not to be in good standing by the Department are prohibited from soliciting donations. The bill proposes to allow charitable fundraising platforms or platform charities to **continue fundraising** on behalf of organizations not in good standing (page 4, line 17, through page 5, line 19). The

Department maintains an online registry of charitable organizations that have satisfied the requirements in chapter 467B, HRS, and are allowed to solicit contributions in Hawaii. These requirements include registration, financial reporting, and annual fees. Failure to meet any of these requirements would result in an organization being listed as not in good standing on the Department's registry, and current law prohibits any fundraising by, or on behalf of, a not-in-good-standing charity. This bill appears to undo this prohibition.

Allowing Non-Compliant Charities to Receive Donations

The bill also permits charitable fundraising platform or platform charities to **continue soliciting and distributing** to charitable organizations that may not be in good standing (page 4, line 17, through page 5, lines 19). The Department is concerned that these amendments rely solely on charitable organizations' tax exempt status under the Internal Revenue Code while disregarding state compliance requirements, such as registration under chapter 467B, HRS. The proposed changes would allow non-compliant organizations to continue receiving donations through charitable solicitation efforts in violation of section 467B-9, HRS.

Recommended Revisions

To address these concerns, the Department recommends the following amendments:

1. Replace the proposed amendments to section 467B-2.3(e) on page 4, lines 8, through page 5, line 19, with the following:

"(e) A charitable fundraising platform or platform charity shall only solicit, permit, or otherwise enable solicitations, or receive, control, or distribute funds from donations for purported charitable purposes for recipient charitable organizations or other charitable organizations in good standing. To determine good standing of a recipient charitable organization or other charitable organization, a charitable fundraising platform [~~or platform charity~~] may rely on [~~electronic lists periodically published by the Internal Revenue Service, department of taxation, or~~

~~department.]~~ the department's registry." (paragraphs (e)(1), (2), and (3) would be deleted.)

2. Delete proposed new section 467B-2.3(k), on page 10, lines 3-9. That provision would allow exemptions or waivers from chapter 467B, HRS, making administration and enforcement difficult. Strict compliance with the requirements in chapter 467B, HRS, ensures fairness in applying the law to all charitable organizations, charitable fundraising platforms, and platform charities.

While the Department agrees with the purpose of this bill to clarify existing standards and safeguards in online crowdfunding, it prefers the amendments in Senate Bill No. 1311, which clarify and update Hawaii's law related to solicitation of funds from the public. Senate Bill No. 1311 revises registration, reporting, fees, and other regulatory requirements for charitable fundraising platforms and platform charities established by Act 205. Additionally, Senate Bill No. 1311 provides the Department with the statutory clarity and capability to effectively regulate charitable fundraising platforms and platform charities, allowing greater protection for the donor community while eliminating duplicative registration, reporting, and fee requirements for the affected entities.

Thank you for the opportunity to provide testimony.



Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

Thank you for the opportunity to testify on SB1048 to amend provisions of Act 205. **GoFundMe strongly supports this legislation** and shares the legislature's goal of **protecting the philanthropic space from misuse while reducing unnecessary burdens on nonprofits and fundraising platforms and maintaining essential consumer protections**. We also recognize and appreciate **SB1311**, which addresses the **ten-day waiting period and bonding requirement**. However, based on GoFundMe's nearly 15 years of experience we believe SB1311 does not go far enough in eliminating other obstacles that could unintentionally restrict charitable giving in Hawaii.

Since 2010, GoFundMe has become a [trusted leader in online fundraising](#) and charitable giving, helping to raise and safely distribute more than \$30 billion dollars to individuals and nonprofits worldwide. Our platform has proven to be a critical tool in times of crisis, empowering people to give when and where it matters most.

In response to the devastating Lahaina wildfires in August 2023, over \$65 million was raised on GoFundMe from individuals across the world, demonstrating the power of swift, direct, and community-driven aid. We enable fundraising for individuals and charitable organizations, and we have best-in-class trust and safety protections in place in the rare occasions when something goes wrong, including:

- Our industry-leading [GoFundMe Giving Guarantee](#) that protects donors and guarantees donors a full refund;
- Innovative technology to screen fundraisers and apply holds on the withdrawal of funds; and
- [Trust & Safety](#) experts who work around the clock to proactively verify fundraisers and investigate reports of misuse.

GoFundMe supports this bill to reduce undue burdens on charitable fundraising platforms and charities. Despite its good intentions, Act 205, as enacted, poses significant risks to charitable fundraising in Hawaii. If left unchanged, it will slow down donations, impose administrative burdens on charities and platforms, and reduce support for Hawaii residents—especially in times of crisis.

These concerns are not hypothetical—we've seen similar regulatory challenges in California (AB 488), which has resulted in widespread confusion and unnecessary barriers for the nonprofit community. SB1048 provides commonsense fixes to prevent Hawaii from facing the same challenges.

Today, we will share **1) a summary of our concerns**, and submit **2) our recommendations and explanations**, as well as **3) additional recommendations (beyond SB1048)** for the Committee's review.

We are also supportive of provisions of SB1311, which also removes the ten-day waiting period and bonding requirement for platforms, but it falls short in some critical areas. We are grateful to the Office of the Attorney General for allowing us to convey our concerns directly and we look forward to continued collaboration in pursuit of our shared goals of protecting nonprofits and the communities that they serve throughout Hawaii. We will meet with them again after this hearing.



SUMMARY OF CONCERNS

- I. **Registration, Ten-Day Waiting Period, and Bonding Requirement:** Act 205 requires platforms and charities to register with the Department 10 days before they begin their fundraising efforts. This requirement would have cost Hawaii residents and the nonprofits serving Hawaii millions of dollars in lost donations in the wake of the Lahaina wildfires. During a crisis or emergency, every minute matters - that is when people are most focused on the crisis and inclined to give generously. We support eliminating the 10-day waiting period for platforms and charities and allowing pre-registration of platforms through Terms of Service and compliance filings. Additionally, the bonding requirement creates a barrier, especially for small nonprofits.
Both SB1048 and 1311 propose to eliminate this requirement, which we support eliminating.
- II. **Good Standing Requirements:** Platforms must verify a charity's standing with the IRS, Hawaii Department of Taxation, and AG's office—a process that can take months to resolve, even for minor administrative errors. This has already caused disruptions in California as charities were deemed non-compliant for minor administrative errors, such as late IRS Form 990 submissions. However, California does not have an effective mechanism for notifying charities that they've been deemed non-compliant. This inability to effectively communicate "good standing" status with charities causes substantial disruption and confusion and raises significant due process concerns for charities whose reputations may be irreparably harmed by this process. Additionally, platforms have had to block donations to otherwise compliant charities simply because the state took months to process corrections and update its lists, leaving charities unable to fundraise for months at a time. This disproportionately affects small nonprofits and erodes donor trust.
SB1048 proposes notification and due process, a grace period, and tiered enforcement.
- III. **Donor Info Retention:** We have concerns about retaining and reporting on donor home addresses. Consumers do not expect to have to give their home address for an online transaction, and requiring them to do so may discourage would-be donors from completing their donations. More broadly, the bill requires platforms to maintain mailing addresses, but neither email addresses, IP addresses, nor card information. In our experience, an IP address is a much more reliable identifier than a home address, as an IP address is difficult to fake, while a user can easily generate a fake home address. With an IP address and an email address, platforms and the Attorney General will have sufficient personally identifiable information to accurately identify donors. Eliminating the obligation to collect donor home addresses will also help ensure that would-be donors are not deterred from completing their payment by an unnecessary data submission requirement.
SB1048 proposes email and IP addresses be sufficient for online transactions.
- IV. **Reporting:** The law's requirement for charitable fundraising platforms to file a detailed financial report for each charitable solicitation campaign would create an unworkable administrative burden, and hamper the ability to effectively utilize these platforms to fundraise on behalf of charities. In 2024 alone, 253 fundraisers on GoFundMe in Hawaii for charitable



organizations would have required individual reports. Additionally, the potential that a donor's donation amount and home address would be reported to the state creates additional concern that requiring such information violates consumers' privacy and would likely have a chilling effect on donations.

We support striking the additional reporting requirement for charitable platforms; OR streamlining the requirement to annual reporting, rather than individual reports following each fundraising campaign.

- V. **Written consent:** In situations where charities are soliciting donations online, having two people provide written consent is neither a common nor an efficient business practice, especially in the wake of a crisis. Generally when charities enter into agreements with platforms, there is a contract or a master services agreement signed by one person on both sides. *SB1048 proposes that when such a written agreement is in place, that will take the place of a separate written contract between a charitable fundraising platform and a recipient charity.*

- VI. **Indemnification:** The provision for vicarious liability creates disproportionate risk for platforms, which may discourage platforms from hosting charitable campaigns, especially for smaller nonprofits. Additionally, this provision is likely unenforceable and preempted by Section 230 of the Communications Decency Act.
SB1048 proposes eliminating vicarious liability.

- VII. **Departmental Discretion and Timeline:** *SB1048 proposes giving the Department of the Attorney General authority to waive requirements if it deems the operations of a platform to meet the goals of this bill. It also proposes a later effective date.*

Hawaii has an opportunity to **strike a balance between strong consumer protection and fostering a thriving, transparent charitable giving environment. SB1048 - combined with the additional recommendations below - provides the necessary fixes to preserve trust in online fundraising while ensuring Hawaii residents continue to receive vital charitable support—especially in times of disaster.**

We appreciate the Committee's thoughtful approach to this issue and look forward to working together **to ensure Hawaii's charitable sector remains strong, transparent, and effective.**

Thank you for your time and consideration.



RECOMMENDATIONS AND EXPLANATIONS

I. Registration, ten-day waiting period, and bonding requirement

Particular language of concern:

- §467B- (a) & (b)
- §467B-12(a)
- §467B-12.5(a)
- §467B-12(b)

These provisions could delay crucial fundraising efforts, especially during crises when donations are most urgent. California’s AB 488 revealed that such delays often resulted in lost donations during critical windows and increased administrative burdens. ***SB1311 also addresses these issues, and we are supportive of that change.***

Recommendations:

Proposal in SB1048	Explanation
Pre-Approval for Platforms	Allow platforms to pre-register by filing Terms of Service and compliance documents in advance, enabling immediate activation of fundraising during crises. By having platform charities fundraise through a registered charitable fundraising platform, this information will already be registered with the department in advance of fundraising needs.
Remove 10 day waiting period for platform charities and charitable fundraising platforms	Waive the ten business day waiting period for fundraising on platform charities and charitable platforms to remove barriers to fundraising, especially in times of disaster or other urgency, in which this unnecessary delay could cost organizations crucial funds.
Eliminate Bonding Requirement for platform charities and charitable fundraising platforms	Bonding requirements create an administrative burden that would disproportionately impact smaller charities or platforms and may impact critical fundraising efforts during times of crisis.

II. Good Standing Requirements

Particular Language of Concern: §467B- (e) & (k)

SB1311 requires clarification on this issue.



Recommendations:

Proposal	Explanation
Notification and Due Process	Require the department to notify charities of deficiencies, and indicate whether the basis for the prohibition is due to an administrative or ministerial deficiency, allowing time for resolution before a charity is marked as not in good standing.
Grace Period for Compliance	Allow charities in violation due to an administrative or ministerial deficiency to continue fundraising while resolving good standing issues.
Tiered Enforcement	Limit immediate fundraising blocks to cases of fraud, intentional noncompliance, or lapsed grace periods; not administrative or ministerial deficiencies.

III. **Donor Info Retention**

Recommendations:

Proposal	Explanation
Align with Industry Standards	<p>Replace the home address requirement with retention of email addresses and/or IP addresses, which are standard for online transactions and sufficient for fraud prevention. Notably, donors can easily misrepresent their physical address, but an IP address is more difficult to misrepresent and is a highly effective datapoint for law enforcement.</p> <p><i>SB1311 does not address this issue.</i></p>
Allow existing agreements to meet requirements	<p>Standard industry practice includes agreements between a charitable fundraising platform and third-party disbursement intermediaries to facilitate transfer of funds to a recipient charitable organization. When such a written agreement is in place, a written contract between a charitable fundraising platform and a recipient charitable organization shall not be required to be filed.</p> <p><i>SB1311 does not address this issue.</i></p>

IV. **Written consent**

Particular language of concern:

- §467B-5(h)
- §467B- (g)
- §467B-2.5(a)



Recommendations:

Proposal	Explanation
<p>Disclosure Model</p>	<p>Rather than prohibiting fundraising on behalf of a charitable organization that has not provided written consent, require disclosure to all potential donors of this arrangement (this is the model used in California)</p> <p><i>SB1311 does not address this issue.</i></p>
<p>Single Authorized Signer</p>	<p>Allow platforms to obtain consent from one authorized representative of the charity, rather than two.</p> <p><i>SB1311 does not address this issue.</i></p>
<p>Exempt charitable fundraising platforms from specific reporting requirements</p>	<p>This level of reporting on each fundraising campaign creates a major administrative burden, hampering the ability of platforms to facilitate charitable donations. For reference, in 2024, 253 fundraisers for charities on GoFundMe would have required reporting. We recommend striking charitable fundraising platforms from this section OR requiring only an annual report, rather than for each fundraising campaign.</p> <p>In addition, we have strong concerns that requiring reporting to the state of individual level donation information violates donors' privacy and would have a chilling effect on donations.</p> <p><i>SB1311 does not address this issue.</i></p>

V. Indemnification

Particular language of concern:

- §467B(i)

Recommendations:

Proposal	Explanation
<p>Revise to a Direct Liability Model</p>	<p>Replace the vicarious liability provision with a direct liability model, holding platforms and charities accountable only for their own actions.</p> <p><i>SB1311 does not address this issue.</i></p>



<p>Ensure Reporting Mechanism and Process, and Refund Option</p>	<p>Ensuring charitable fundraising platforms have stringent processes in place to address complaints or instances of misuse, including full refunds of contributions.</p> <p><i>SB1311 does not address this issue.</i></p>
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VI. Departmental Discretion and Timeline

Recommendations:

Proposal	Explanation
<p>Increased flexibility in implementation</p>	<p>Allowing the department to enter into an agreement with a charitable fundraising platform to waive specific any requirements under this chapter, provided that the charitable fundraising platform demonstrates to the department that its standard operating procedures achieve the same or similar purposes of transparency reporting, monitoring, and accountability. This provision will allow the department flexibility to deem charitable fundraising platforms to be in compliance if their business practices adhere to the intentions of the law. This flexibility will also allow implementation to reflect current best practices in a constantly evolving technology landscape.</p>
<p>Delay implementation timeline</p>	<p>Delaying implementation of the bill to July 1, 2026 will allow for ample time for effective implementation and stakeholder engagement.</p>

ADDITIONS

Specific additional amendments to the language already included in SB1048:

- §467B-12.5 (a) (2) **strike “unless ordered by the department”**
 - The agreement between a platform and a third party disbursement intermediary would take the place of a written contract as described in this section.
- §467B-2.5 (a-e) **strike “charitable fundraising platform” from this section.**
 - These requirements are more appropriately applied to professional solicitors and would create an undue burden on platforms and charities, and a chilling effect on donations, if implemented as it is currently in law.
 - Alternatively, we would support modifying this requirement to an annual report, rather than a report within 90 days following each solicitation campaign.