



**WRITTEN 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. 2983, S.D. 1, RELATING TO SOLICITATION OF FUNDS FROM THE PUBLIC.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 27, 2024 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Kristie Cruz Chang,
Deputy Attorney General, at 808-586-1486)

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) supports the intent of this bill and provides the following comments. The Department has examined this bill and prepared these substantial recommended amendments because as the Maui wildfires showed us, we need to expand regulation of charitable fundraising activities, including charitable fundraising on internet platforms.

This bill proposes to (1) regulate charitable fundraising platforms and activities of platform charities during declared federal disasters, (2) regulate the misuse of funds, (3) impose vicarious liability upon a platform charity for a charitable fundraising platform's misuse of funds, and (4) exempt national disaster charitable organizations from its provisions.

The wording of this bill appears to be largely taken from California Assembly Bill 488, which was signed into law on October 7, 2021, and which came into effect on January 1, 2023. Because the bill utilizes California terminology and a framework not synthesized with Hawaii law and regulations, the bill requires substantial revisions.

The Department recommends the changes described herein to this bill, in order to (1) align the bill's wording with our current statutory wording, (2) expand the bill's applicability to include charitable fundraising on internet platforms when no federal disaster is declared, and (3) remove wording that conflicts with the requirements of

section 467B-9(a), Hawaii Revised Statutes (HRS).

I. Recommended amendments to the wording of this bill

To expand the applicability of the bill beyond emergency periods, the Department recommends deleting the following definitions from subsection (l) of the bill and any references to these definitions throughout the bill as follows:

Definitions:

- Page 10, lines 16-17, “Affected area”;
- Page 14, lines 8-9, “Emergency period”; and

References:

- Page 1, line 5, “emergency periods.”;
- Page 1, line 5, “During an emergency period,”;
- Page 1, lines 10-11, “for an affected area during an emergency period,”;
- Page 2, line 4, “During an emergency period,”;
- Page 2, lines 10-11, “for an affected area during an emergency period,”;
- Page 2, lines 17-20, “A report shall be filed each month during an emergency period; provided that a final report shall be filed within thirty days after the end of the emergency period.”;
- Page 3, lines 17-18, “during an emergency period”;
- Page 3, line 20, “During an emergency period,”;
- Page 4, line 3, “for an affected area”
- Page 4, line 14, “During an emergency period,”;
- Page 4, line 15, “for an affected area”;
- Page 6, line 20, “during an emergency period”;
- Page 7, lines 1-2, “for an affected area.”;
- Page 9, line 6, “during an emergency period”;
- Page 9, line 7, “for an affected area”;
- Page 9, line 13, “for an affected area”;
- Page 9, line 15, “during an emergency period”; and

- Page 10, lines 8-9, “and the contract is in effect during any portion of an emergency period,”.

To align the bill with current statutory wording and to remove exemptions in the bill that are prohibited under section 467B-9(a), HRS, the Department recommends the following amendments:

- Page 1, lines 6-7, delete, “that is a trustee for charitable purpose”. The phrase introduces a new classification related to charitable organizations that may be unnecessary and currently is not defined within the statutory framework.
- Page 1, line 17, through page 2, line 1, delete, “expire after one year and shall be subject to a registration and”, and replace with, “be subject to a yearly”.
- Page 2, lines 4-5, delete, “that is a trustee for charitable purpose”. The phrase introduces a new classification related to charitable organizations that may be unnecessary and currently is not defined within the statutory framework.
- Page 2, lines 8-14, delete, “If a platform charity engages the services of a charitable fundraising platform for purported charitable solicitation for an affected area during an emergency period, the platform charity shall promptly notify the department of the engagement, unless previously specified through the registration of the platform charity or charitable fundraising platform.” Deletion of this section will expand the applicability of registration beyond emergency situations and require platform charities to register with the Department.
- Page 2, lines 17-20, delete, “A report shall be filed each month during an emergency period; provided that a final report shall be filed within thirty days after the end of the emergency period.” and replace with, “Reports shall be filed in pursuant to section 467B-12.” The Department’s recommended change aligns the filing and reporting requirements for charitable fundraising platforms and platform charities with professional fundraising counsels and professional solicitors.
- Page 4, line 17, delete, “tier 1, tier 2, or tier 3” and replace with “solicitation”. The Department’s recommended change removes the bill’s tier system associated with an exemption to the requirement of consent from the recipient charity.

The Department is opposed to such an exemption that contravenes an activity prohibited under section 467B-9(a), HRS.

- Page 6, lines 16-17, delete, “; provided that this paragraph shall not apply to tier 3 activities.” Please see above for the Department’s rationale for this recommended change.

- Page 7, line 9, through page 9, line 4. The Department is opposed to the bill’s proposed exceptions to the charity recipient consent requirement established in section 467B-9(a), HRS.

- Page 9, lines 5-7, delete, “based on tier 1 or tier 2 activities during an emergency period, and with respect to purported charitable purposes for an affected area,”. The Department’s recommended change would require donors to receive a prompt donation receipt from charitable fundraising platforms and platform charities in all cases and not just during an emergency period.

- Page 10, lines 12-14, delete subsection (k). The Department recommends removal of this subsection as part of our overall recommendation to make the bill’s applicability broader than for emergency periods only. As such, there would be no need for national disaster charitable organizations to be exempt from the section.

- Page 11, lines 3-5, delete, “(1) [t]ier 1 activity; (2) [t]ier 2 activity; (3) [t]ier 3 activity;”. The Department’s recommended deletion aligns with our previous opposition to the bill’s proposed exemption to the recipient charity consent requirement set forth in section 467B-9(a), HRS.

- Page 13, lines 6 and 8, delete, “commercial fundraiser for charitable purposes” and replace with, “professional solicitor”. The Department’s recommended change aligns the bill with the current statutory wording for a professional solicitor.

- Page 14, lines 15-16, delete the definition for “[n]ational disaster charitable organization”. The Department recommends deleting this definition since these organizations are not exempt from the requirements of chapter 467B, HRS.

- Page 16, lines 7-21, delete the definitions for “[t]ier 1 activity”, “[t]ier 2 activity”, and “[t]ier 3 activity”. The Department’s recommendation aligns with our

previously discussed opposition to an exemption to the recipient charity consent requirement set forth in section 467B-9(a), HRS.

- Page 17, lines 1-2, delete the definition for “[t]rustee”. The Department recommends this term be deleted as unnecessary.

II. Recommended amendments to chapter 467B, HRS, to synthesize the existing statute with the intent of this bill

In addition to the above amendments to the new section of chapter 467B proposed in the bill, the Department recommends the following amendments to chapter 467B, HRS, to synthesize Hawaii law with the intent of this bill. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

1. §467B-1 Definitions.

“Charitable sales promotion” should be amended as follows:

““Charitable sales promotion” means an advertising or sales campaign, conducted by a commercial co-venturer, charitable fundraising platform, or platform charity, that represents that the purchase or use of goods or services offered by the commercial co-venturer, charitable fundraising platform, or platform charity will benefit, in whole or in part, a charitable organization or charitable purpose.”

“Gross revenue” should be amended as follows:

““Gross revenue” means income of any kind from all sources, including all amounts received as the result of any solicitation by a professional solicitor[-], charitable fundraising platform, or platform charity.”

“Owner” should be amended as follows:

““Owner” means any person who has a direct or indirect interest in any professional fundraising counsel, [ø] professional solicitor[-], charitable fundraising platform, or platform charity.”

2. §467B-1.5 Professional solicitors[-], charitable fundraising platforms, platform charities; required disclosures. (a) Every professional solicitor, charitable fundraising platform, platform charity, and every employee or agent thereof, who solicits contributions from a prospective donor or contributor in this State shall at the outset of any oral or written request for a contribution:

- (1) Identify themselves by their true surname and first name, and the name of their employer or the contractor as the case may be, that is compensating the individual making the solicitation;
- (2) Identify the name of the professional solicitor, charitable fundraising platform, or platform charity registered with the department of the attorney general that has contracted with the charitable organization to provide the solicitation services and, if the individual is employed by a subcontractor, the name of the registered subcontractor;
- (3) Disclose that the person making the oral or written request for a donation is being paid to make such solicitation and the name of the charitable organization on whose behalf the person making the request is soliciting; and
- (4) Disclose, orally and in writing, the fact that a copy of the professional solicitor's, charitable fundraising platform's, or platform charity's, registration data and financial reports are available from the department of the attorney general.

(b) A professional solicitor, charitable fundraising platform, or platform charity who makes an oral solicitation by telephone, door-to-door, or otherwise, prior to collecting or attempting to collect any contribution, shall provide a written confirmation of the expected contribution and clearly disclose that the contribution is not tax-deductible, if applicable, or, if the professional solicitor, charitable fundraising platform, or platform charity maintains that the contribution is tax-deductible in whole or in part, the portion of the contribution that the professional solicitor, charitable fundraising platform, or platform charity maintains is tax-deductible. The written confirmation shall also conspicuously disclose the name and current address of the registered professional solicitor[-], charitable fundraising platform, or platform charity.

3. §467B-2.5 Professional solicitor, charitable fundraising platform, and platform charity financial reports; contribution account. (a) A professional solicitor, charitable fundraising platform, or platform charity shall file with the attorney general a financial report for any charitable solicitation campaign, including gross

revenue from Hawaii donors and national gross revenue and an itemization of all expenses incurred on a form prescribed by the attorney general no more than ninety days after the end of the solicitation campaign and, for solicitation campaigns lasting more than one year, within ninety days after each anniversary of the commencement of the solicitation campaign and within ninety days after the end 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, charitable fundraising platform, platform charity, or by an authorized officer or agent of the professional solicitor, charitable fundraising platform, or platform charity 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, charitable fundraising platform, or platform charity 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, charitable fundraising platform, or platform charity 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.

(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, charitable fundraising platform, or platform charity to the attorney general not more than seven days after the change occurs.

(e) Each contribution in the control or custody of the professional solicitor, charitable fundraising platform, or platform charity 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.

4. §467B-5 Records to be kept. (a) Every charitable organization, professional fundraising counsel, professional solicitor, ~~[and]~~ commercial co-venturer, charitable fundraising platform, and platform charity subject to this chapter shall keep true and accurate records as to its activities in a form that will accurately provide support for the information required by this chapter. Upon demand, the records shall be made available to the attorney general for inspection. Except as provided in subsection (b), records shall be retained for a period of not less than three years.

(b) If a professional solicitor, charitable fundraising platform, or platform charity sells tickets to an event and represents that tickets will be donated for use by another, the professional solicitor, charitable fundraising platform, or platform charity for not less than three years after the completion of such event, shall maintain the following records, which shall be available for inspection upon demand by the attorney general:

- (1) The number of tickets purchased and donated by each contributor; and

- (2) The name and address of all organizations receiving donated tickets for use by others, including the number of tickets received by each organization.”

5. §467B-5.5 Commercial co-venturer's, charitable fundraising platform, and platform charity charitable sales promotions. (a) All charitable sales promotions by a commercial co-venturer, charitable fundraising platform, and platform charity shall disclose the name of the commercial co-venturer, charitable fundraising platform, and platform charity.

(b) Prior to the commencement of any charitable sales promotion in this State conducted by a commercial co-venturer, charitable fundraising platform, or platform charity using the name of a charitable organization, the commercial co-venturer, charitable fundraising platform, or platform charity shall obtain the written consent of the charitable organization whose name will be used during the charitable sales promotion. The commercial co-venturer, charitable fundraising platform, and platform charity 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, charitable fundraising platform, and platform charity 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 percent per unit of goods or services purchased or used that is to benefit the charitable organization;
- (4) A provision for an accounting on a per unit basis, which shall be prepared by the commercial co-venturer, charitable fundraising platform, and platform charity and given 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 each 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 each anniversary of the commencement of the promotion and within ninety days after the end of the charitable sales promotion.

(c) A copy of an accounting shall be provided to the attorney general not more than twenty days after the copy is requested by the attorney general. An accounting shall be kept by the commercial co-venturer, charitable fundraising platform, and platform charity for a period of three years, unless the commercial co-venturer, charitable fundraising platform, or platform charity and the charitable organization mutually agree that the accounting should be kept by the charitable organization instead of the commercial co-venturer.

(d) A late filing fee of \$20 shall be imposed on a commercial co-venturer, charitable fundraising platform, or platform charity 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 written consent required under subsection (b) shall be signed by the authorized representative of the commercial co-venturer, charitable fundraising platform, or platform charity 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, charitable fundraising platform, or platform charity has engaged in an act or practice that violates this chapter.

(g) When the attorney general finds that a commercial co-venturer, charitable fundraising platform, or platform charity 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.

6. §467B-8 Information filed to become public records. Statements, reports, professional fundraising counsel contracts [øf], professional solicitor contracts, charitable fundraising platform contracts and consents, platform charity contracts and consents, and commercial co-venturer consents, and all other documents and information required to be filed under this chapter or by the attorney general shall become government records in the department and be open to the general public for inspection pursuant to chapter 92F; provided that information in any registration statement concerning the residential addresses of any officer or director or that identifies a charitable organization's financial or banking accounts and audited financial statements submitted by registered charitable organizations shall be confidential under chapter 92F.

7. §467B-9 Prohibited acts. (a) No person, for the purpose of soliciting contributions from persons in the State, shall use the name of any other person except that of an officer, director, or trustee of the charitable organization by or for which contributions are solicited, without the written consent of the other persons.

A person shall be deemed to have used the name of another person for the purpose of soliciting contributions if the latter person's name is listed on any stationery, advertisement, brochure, or correspondence in or by which a contribution is solicited by or on behalf of a charitable organization or the latter person's name is listed or referred

to in connection with a request for a contribution as one who has contributed to, sponsored, or endorsed the charitable organization or its activities.

(b) No charitable organization, professional solicitor, professional fundraising counsel [œf], commercial co-venturer, charitable fundraising platform, or platform charity soliciting contributions shall use a name, symbol, or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public.

(c) No person, in connection with any solicitation or sale, shall misrepresent or mislead anyone by any manner, means, practice, or device whatsoever, to believe that the solicitation or sale is being conducted on behalf of a charitable organization or that the proceeds of the solicitation or sale will be used for charitable purposes, if that is not the fact.

(d) No professional solicitor, charitable fundraising platform, or platform charity, and no agent, employee, independent contractor, or other person acting on behalf of the professional solicitor, charitable fundraising platform, or platform charity shall solicit in the name of or on behalf of any charitable organization unless:

- (1) The professional solicitor, charitable fundraising platform, or platform charity has obtained the written authorization of two officers of the organization, which authorization shall bear the signature of the professional solicitor, charitable fundraising platform, or platform charity and the officers of the charitable organization and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date of issuance, and has filed a copy of the written authorization with the attorney general prior to the solicitation; and
- (2) The professional solicitor, charitable fundraising platform, platform charity, and any person who, for compensation, acts as an agent, employee, independent contractor, or otherwise on behalf of the professional solicitor, charitable fundraising platform, or platform charity carries a copy of the authorization while conducting solicitations, and exhibits it on request to persons solicited or police officers or agents of the department.

(e) No charitable organization, professional fundraising counsel, professional solicitor [øf], commercial co-venturer, charitable fundraising platform, or platform charity subject to this chapter shall use or exploit the fact of filing any statement, report, professional fundraising counsel contracts, written consents [øf], professional solicitor contracts, charitable fundraising platform contracts, or platform charity contracts and written consents, or other documents or information required to be filed under this chapter or with the department so as to lead the public to believe that the filing in any manner constitutes an endorsement or approval by the State of the purposes or goals for the solicitation by the charitable organization, professional fundraising counsel, professional solicitor [øf], commercial co-venturer[;], charitable fundraising platform, or platform charity; provided that the use of the following statement shall not be deemed a prohibited exploitation: "Information regarding this organization has been filed with the State of Hawaii department of the attorney general. Filing does not imply endorsement or approval of the organization or the public solicitation for contributions."

(f) No person, while soliciting, shall impede or obstruct, with the intent to physically inconvenience the general public or any member thereof in any public place or in any place open to the public.

(g) No person shall submit for filing on behalf of any charitable organization, professional fundraising counsel, professional solicitor [øf], commercial co-venturer, charitable fundraising platform, or platform charity any statement, financial statement, report, attachment, or other information to be filed with the department that contains information, statements, or omissions that are false or misleading.

(h) No person shall solicit contributions from persons in the State or otherwise operate in the State as a charitable organization, an exempt charitable organization, professional fundraising counsel, professional solicitor [øf], commercial co-venturer, charitable fundraising platform, or platform charity unless the person has filed the information required by this chapter with the department in a timely manner.

(i) No person shall aid, abet, or otherwise permit any persons to solicit contributions from persons in the State unless the person soliciting contributions has complied with the requirements of this chapter.

(j) No person shall fail to file the information and registration statement, annual or financial reports, and other statements required by this chapter or fail to provide any information demanded by the attorney general pursuant to this chapter in a timely manner.

(k) No person shall employ in any solicitation or collection of contributions for a charitable organization, any device, scheme, or artifice to defraud or obtain money or property by means of any false, deceptive, or misleading pretense, representation, or promise.

(l) No person, in the course of any solicitation, shall represent that funds collected will be used for a particular charitable purpose, or particular charitable purposes, if the funds solicited are not used for the represented purposes.

(m) No person shall receive compensation from a charitable organization for obtaining moneys or bequests for that charitable organization if that person has also received compensation for advising the donor to make the donation; provided that compensation may be received if the person obtains the written consent of the donor to receive compensation from the charitable organization.

(n) No person shall act as a professional solicitor, charitable fundraising platform, or platform charity if the person, any officer, any person with a controlling interest therein, or any person the professional solicitor, charitable fundraising platform, or platform charity employs, engages, or procures to solicit for compensation, has been convicted by any federal or state court of any felony, or of any misdemeanor involving dishonesty or arising from the conduct of a solicitation for a charitable organization or purpose.

(o) No charitable organization shall use the services of an unregistered professional solicitor, professional fundraising counsel, charitable fundraising platform, or platform charity.

8. §467B-9.5 Financial statements. Whenever the attorney general has reasonable grounds to believe that any charitable organization, professional fundraising counsel, professional solicitor [øf], commercial co-venturer, charitable fundraising platform, or platform charity has engaged in any act or practice constituting a violation of

this chapter or any rule or order adopted or issued, the attorney general may require the charitable organization, professional fundraising counsel, professional solicitor [øf]₁, commercial co-venturer, charitable fundraising platform, or platform charity to submit to the department an audited financial statement prepared in accordance with generally accepted accounting principles by an independent certified public accountant, or as otherwise required by the attorney general.

9. §467B-9.6 Enforcement. (a) If any charitable organization, professional fundraising counsel, professional solicitor [øf]₁, commercial co-venturer, charitable fundraising platform, or platform charity fails to file any statement, report, written consent, or other information required to be filed under this chapter, the attorney general may demand that the charitable organization, the professional fundraising counsel, professional solicitor [øf]₁, commercial co-venturer, charitable fundraising platform, or platform charity provide the statement, report, written consent, or other information not more than twenty days after demanded by the attorney general. This demand may be mailed to the address on file with the department.

(b) Whenever the attorney general has reason to believe that any charitable organization, professional fundraising counsel, professional solicitor, commercial co-venturer, charitable fundraising platform, platform charity, or other person is operating in violation of this chapter, the attorney general may investigate and bring an action in any court of this State to enjoin the charitable organization, professional fundraising counsel, professional solicitor, commercial co-venturer, charitable fundraising platform, platform charity, or other person from continuing the violation or doing any acts in furtherance thereof, and for any other relief that the court deems appropriate.

10. §467B-9.7 Administrative enforcement and penalties. (a) The attorney general may refuse to register, revoke, or suspend the registration of any charitable organization, professional fundraising counsel [øf]₁, professional solicitor, charitable fundraising platform, or platform charity, or issue a cease and desist order whenever the attorney general finds that a charitable organization, professional fundraising counsel [øf]₁, professional solicitor, charitable fundraising platform, platform charity, or its agent, servant, or employee: [The remainder of the section remains unchanged.]

11. §467B-12 Filing requirements for professional fundraising counsel [and], professional solicitors[.], charitable fundraising platform, and platform charity.

(a) Every professional fundraising counsel [øf], professional solicitor, charitable fundraising platform, or platform charity, prior to any solicitation, shall register with the department. The registration statement shall contain the information set forth in subsection (e). The registration statement shall be accompanied by a fee in the amount of \$250, or in the amount and with any additional sums as may be prescribed by the attorney general. Renewal registration statements shall be filed with the department on or before July 1 of each calendar year by each professional fundraising counsel [øf], professional solicitor[.], charitable fundraising platform, and platform charity. The renewal statement shall contain the information set forth in subsection (e). A renewal fee of \$250, or in any amount and with any additional sums as may be prescribed by the attorney general, shall accompany the renewal statement. If a renewal registration required under this section is not filed, unless it is shown that the failure is due to reasonable cause, a fine 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.

(b) Each professional solicitor, charitable fundraising platform, or platform charity, at the time of each filing, shall file with and have approved by the attorney general a bond in which the applicant is the principal obligor in the penal sum of \$25,000 issued with good and sufficient surety or sureties approved by the attorney general and which shall remain in effect for one year. The bond shall inure to the benefit of the State, conditioned that the applicant, its officers, directors, employees, agents, servants, and independent contractors shall not violate this chapter. A partnership or corporation that is a professional solicitor, charitable fundraising platform, or platform charity may file a consolidated bond on behalf of all its members, officers, and employees.

(c) The attorney general shall examine each registration statement and supporting document filed by a professional fundraising counsel [øf], professional solicitor, charitable fundraising platform, or platform charity and shall determine whether

the registration requirements are satisfied. If the attorney general determines that the registration requirements are not satisfied, the attorney general shall notify the professional fundraising counsel [øf], professional solicitor, charitable fundraising platform, or platform charity in writing within fifteen business days of its receipt of the registration statement; otherwise the registration statement is deemed to be approved. Within seven business days after receipt of a notification that the registration requirements are not satisfied, the professional fundraising counsel [øf], professional solicitor, charitable fundraising platform, or platform charity may request a hearing.

(d) The attorney general may require that registration and renewal registration, surety bonds, and contracts be filed with the department electronically and may require the use of electronic signatures.

(e) Each registration and renewal registration shall contain:

(1) The names and addresses of all owners, officers, and directors of a professional fundraising counsel[;] or charitable fundraising platform, and the names and addresses of all owners, officers, and directors of a professional solicitor[;] or platform charity; [The remaining provisions not revised herein remain unchanged.]

12. §467B-12.5 Written contracts; filing with attorney general. (a) There shall be a written contract between a charitable organization and a professional fundraising counsel [øf], professional solicitor, charitable fundraising platform, or platform charity, that shall be filed by the professional fundraising counsel [øf], professional solicitor, charitable fundraising platform, or platform charity with the attorney general at least ten business days prior to the performance by the professional fundraising counsel [øf], professional solicitor, charitable fundraising platform, or platform charity of any service. No solicitation or service pursuant to the contract shall begin before the contract is filed with the attorney general. The contract shall be signed by two authorized officials of the charitable organization, one of whom shall be a member of the organization's governing body, and the authorized contracting officer for the professional fundraising counsel [øf], professional solicitor[;], charitable fundraising platform, or platform charity. The contract shall contain all of the following provisions:

- (1) The legal name and address of the charitable organization;
- (2) A statement of the charitable purpose for which the solicitation campaign is being conducted;
- (3) A statement of the respective obligations of the professional fundraising counsel [øf], professional solicitor, charitable fundraising platform, or platform charity and the charitable organization;
- (4) A statement of the guaranteed minimum percentage of the gross receipts from contributions that will be remitted to or retained by the charitable organization, if any, or, if the solicitation involves the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price that will be remitted to the charitable organization, if any. The stated percentage shall exclude any amount that the charitable organization is to pay as fundraising costs;
- (5) Information concerning the compensation of the professional solicitor, fundraising counsel, charitable fundraising platform, or platform charity, as follows:
 - (A) If the compensation of the professional fundraising counsel [øf], professional solicitor, charitable fundraising platform, or platform charity is contingent upon the number of contributions or the amount of revenue received, a statement shall be included specifying the percentage of the gross revenue that is the basis for that compensation. The stated percentage shall include any amount that the professional fundraising counsel [øf], professional solicitor, charitable fundraising platform, or platform charity is to be reimbursed for fundraising costs;
 - (B) If the compensation of the professional solicitor, charitable fundraising platform, or platform charity is not contingent upon the number of contributions or amount of revenue received from the solicitation campaign, the compensation shall be expressed as a reasonable estimate of the percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. The

stated assumptions shall be based upon all of the relevant facts known to the professional solicitor regarding the solicitation to be conducted by the professional solicitor; or

- (C) If the compensation of the fundraising counsel, charitable fundraising platform, or platform charity, is not contingent on the number of contributions or amount of revenue received from the solicitation campaign, the compensation shall be stated in a dollar amount;
- (6) The effective and termination dates of the contract or, if the contract does not have a set termination date, a clause allowing either party a reasonable period to terminate the contract or notify the other party if either party chooses not to renew. The contract shall also contain the date services will commence with respect to solicitation in this State of contributions for a charitable organization;
- (7) In the case of a professional fundraising counsel, charitable fundraising platform, or platform charity, a statement that the professional fundraising counsel will not at any time have custody or control of contributions[;], as applicable;
- (8) A statement that the charitable organization exercises control and approval over the content and volume of any solicitation; and
- (9) Any other information required by the rules of the attorney general.

(b) No professional fundraising counsel [øf]₁ professional solicitor, charitable fundraising platform, or platform charity shall contract with a charitable organization unless the professional fundraising counsel [øf]₁ professional solicitor, charitable fundraising platform, or platform charity is registered with the department. A contract with an unregistered professional fundraising counsel [øf]₁ professional solicitor, charitable fundraising platform, or platform charity shall be voidable at the option of the charitable organization.

(c) Whenever a charitable organization contracts with a professional fundraising counsel [øf]₁ professional solicitor, charitable fundraising platform, or platform charity, the charitable organization shall have the right to cancel the contract without cost,

penalty, or liability, for a period of ten days following the date on which that contract is executed. Any provision in the contract that is intended to waive this right of cancellation shall be void and unenforceable. . . . [The remaining provisions not revised herein remain unchanged.]

Additionally, the Department requests the effective date of this bill be delayed until January 1, 2026, to allow sufficient time for the Department to implement this new law and develop appropriate forms.

Thank you for the opportunity to provide testimony.



**Testimony to the Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Tuesday, February 27, 2024 at 10:00 a.m.
Conference Room 016 & Videoconference
SB 2983, SD1 Relating to Solicitation of Funds from the Public**

Dear Chair Rhoads, Vice Chair Gabbard, and members of the Judiciary Committee:

On behalf of the Hawai`i Alliance of Nonprofit Organizations, I would like to offer our comments on **SB 2983, SD1** which amends Chapter 467B, HRS, to regulate charitable fundraising platforms and activities of platform charities during declared federal disasters.

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 efforts to bring greater accountability and transparency to the solicitation and use of funds for charitable causes and to root out fraudulent actors who may unscrupulously take advantage of emergency periods by soliciting donations that are not used for a bona fide charitable purpose. At the same time, HANO believes nonprofit organizations which have been registered and in compliance with Chapter 467B, HRS, should not be subject to excessive administrative burdens established for the purpose of ferreting out these bad actors during an emergency period. During such times, these same nonprofit organizations must often respond to the impacts of the disaster and service the affected communities and, as such, must focus their attention on these efforts.

Thank you for the opportunity to submit this testimony.

Mahalo,

Lisa Maruyama
President and CEO