

S.B. NO. 2248

JAN 25 2006

A BILL FOR AN ACT

RELATING TO SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 467B, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§467B- Professional solicitors; required disclosures.

5 A paid solicitor who makes an oral solicitation by telephone,
6 door-to-door, or otherwise shall furnish to each contributor,
7 prior to collecting or attempting to collect any contribution, a
8 written confirmation of the expected contribution, which
9 confirmation shall contain the following information clearly and
10 conspicuously:

11 (1) The full legal name, address, and telephone number of
12 the individual professional solicitor who directly
13 communicated with the contributor; and

14 (2) A disclosure that the contribution is not tax-
15 deductible, if such disclosure is applicable, or, if
16 the professional solicitor maintains that the

1 contribution is tax-deductible in whole or in part,
2 the portion of the contribution that the professional
3 solicitor maintains is tax-deductible."

4 SECTION 2. Section 467B-1, Hawaii Revised Statutes, is
5 amended as follows:

6 (1) By amending the definition of "professional fund-
7 raising counsel" or "professional fundraising counsel" to read
8 as follows:

9 ""Professional fund-raising counsel" or "professional
10 fundraising counsel" means any person who~~[,]~~ for ~~[a fee,~~
11 compensation, plans, conducts, manages, ~~[carries on,~~ advises,
12 consults, or ~~[acts as a consultant whether directly or~~
13 ~~indirectly, in connection with soliciting]~~ prepares material
14 for, or respect to, the solicitation of contributions in this
15 State for ~~[or on behalf of any]~~ a charitable organization, but
16 who actually solicits no contributions as a part of the person's
17 services~~[-],~~ and who does not employ, procure, or engage any
18 compensated person to solicit contributions. The term
19 ~~[includes]~~ shall not include a bona fide volunteer, salaried
20 officer, or employee of a charitable organization ~~[if the bona~~
21 ~~fide volunteer, salaried officer, or employee of the charitable~~
22 ~~organization receives percentage compensation]."~~

1 (2) By amending the definition of "professional solicitor"
2 to read as follows:

3 ""Professional solicitor" means any person who, for a
4 financial or other consideration, solicits contributions in this
5 State for or on behalf of a charitable organization~~[,]~~, or any
6 person the professional solicitor independently contracts with
7 to solicit for contributions. A person who is otherwise a
8 professional fundraising counsel shall be deemed a professional
9 solicitor if the person's compensation is related to the amount
10 of contributions received. The term does not include a bona
11 fide volunteer. The term includes a [~~bona fide volunteer,~~
12 salared officer[~~]~~ or employee of a charitable organization if
13 [~~the bona fide volunteer,~~ salared officer[~~]~~ or employee of
14 the charitable organization receives percentage compensation.
15 The term does not include an attorney, investment counselor or
16 advisor, financial advisor, or banker, or other person who:

17 (1) Advises another person to make a contribution to a
18 charitable organization as part of the person's
19 employment; and

20 (2) Does not receive compensation from the charitable
21 organization for that advice."

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1 (3) By amending the definition of "solicit" and
2 "solicitation" to read as follows:

3 "Solicit" and "solicitation" mean a request directly or
4 indirectly for money, credit, property, financial assistance, or
5 thing of value on the plea or representation that the money,
6 credit, property, financial assistance, or thing of value, or
7 any portion thereof, will be used for a charitable purpose or to
8 benefit a charitable organization. These terms shall not
9 include the preparation or submission of an application or
10 request for a grant or subsidy from any organization exempt from
11 taxation under section 501(3) of the Internal Revenue Code or
12 any governmental agency that has an established application and
13 review procedure for reviewing such requests. These terms shall
14 include the following:

- 15 (1) Any oral or written request.
- 16 (2) The making of any announcement to any organization for
17 the purpose of further dissemination, including
18 announcements to the press, over the radio or
19 television, or by telephone, telegraph, or facsimile,
20 concerning an appeal or campaign by or for any
21 charitable organization or purpose.

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1 (3) The distribution, circulation, posting, or publishing
2 of any handbill, written advertisement, or other
3 publication that directly or by implication seeks to
4 obtain public support.

5 (4) Where the sale or offer or attempted sale, of any
6 advertisement, advertising space, book, card, tag,
7 coupon, device, magazine, membership, merchandise,
8 subscription, flower, ticket, candy, cookies, or other
9 tangible item in connection with which any appeal is
10 made for any charitable organization or purpose; or
11 where the name of any charitable organization is used
12 or referred to in any appeal as an inducement or
13 reason for making any sale; or where in connection
14 with any sale, any statement is made that the whole or
15 any part of the proceeds from any sale will be used
16 for any charitable purpose or to benefit any
17 charitable organization.

18 (5) A request made through the use of receptacles for
19 contributions such as honor boxes, vending machines,
20 wishing wells, contribution boxes, and novelty
21 machines, where a charitable appeal is used or

1 referred to or implied as an inducement or reason to
2 contribute.

3 A solicitation occurs whether or not the person making the
4 solicitation receives any contribution."

5 SECTION 3. Section 467B-2.5, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) Within ninety days after a solicitation campaign or
8 event has been completed and on the anniversary of the
9 commencement of a solicitation campaign lasting more than one
10 year, a professional solicitor shall file with the attorney
11 general a financial report for the campaign, including gross
12 revenue and an itemization of all expenses incurred. This
13 report shall be signed [~~and sworn to~~] under penalty provided by
14 section 710-1063 by the authorized contracting agent for the
15 professional solicitor and two authorized officials of the
16 charitable organization. A professional solicitor shall
17 maintain during each solicitation campaign and for not less than
18 three years after the completion of that campaign the following
19 records, which shall be available for inspection upon demand by
20 the attorney general:

21 (1) The date and amount of each contribution received and
22 the name and address of each contributor;

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

9 SECTION 4. Section 467B-9.7, Hawaii Revised Statutes, is
10 amended as follows:

11 (1) By amending subsection (a) to read as follows:

12 "(a) The attorney general may refuse to register, may
13 revoke, or may suspend the registration of any charitable
14 organization, professional fundraising counsel, or professional
15 solicitor whenever the attorney general finds that a charitable
16 organization, professional fundraising counsel, or professional
17 solicitor, or an agent, servant, or employee thereof:

18 (1) Has violated or is operating in violation of any
19 provision of this chapter, the rules of the attorney
20 general, or an order issued by the attorney general;

21 (2) Has refused or failed, after notice, to produce any
22 records of the organization or to disclose any

1 information required to be disclosed under this
 2 chapter or the rules of the attorney general; [e~~r~~]
 3 (3) Has made a material false statement in an application,
 4 statement, or report required to be filed under this
 5 chapter[-]; or
 6 (4) Has failed to file the financial report required by
 7 section 467B-2.5, or filed an incomplete financial
 8 report."

9 (2) By amending subsection (c) to read as follows:

10 "~~(c) [All actions of the attorney general shall be taken~~
 11 ~~subject to the right of notice, hearing, and adjudication and~~
 12 ~~the right of appeal therefrom in accordance with chapter 91.]~~
 13 Any person aggrieved by an action of the attorney general under
 14 this section may request a hearing to review such action in
 15 accordance with chapter 91 and rules adopted by the attorney
 16 general. Any such request shall be made within ten days after
 17 the attorney general has served the person with notice of such
 18 action, which notice shall be deemed effective upon mailing."

19 SECTION 5. Section 467B-12, Hawaii Revised Statutes, is
 20 amended to read as follows:

21 "**§467B-12 Filing requirements for professional fundraising**
 22 **counsel and professional solicitors.** (a) Every professional

1 fundraising counsel or professional solicitor, prior to any
2 solicitation, shall [~~file a registration statement~~] register
3 with the department. The registration statement shall be [~~in~~
4 ~~writing under oath or affirmation~~] in the form prescribed by the
5 attorney general and shall contain the information as the
6 attorney general may require. The registration statement shall
7 be accompanied by a fee in the amount of \$250, or in the amount
8 and with any additional sums as may be prescribed by the
9 attorney general. The statement shall list the names[~~,~~] and
10 addresses [~~,~~ ~~and social security numbers~~] of all owners,
11 officers, [~~agents, servants, employees,~~] and directors [~~,~~ ~~and~~
12 ~~independent contractors~~] of a professional fundraising counsel,
13 and the names [~~,~~] and addresses [~~,~~ ~~and social security numbers~~] of
14 all owners, officers, [~~agents, servants, employees,~~] and
15 directors [~~,~~ ~~and independent contractors~~] of a professional
16 solicitor. Renewal statements shall be filed with the
17 department on or before July 1 of each calendar year [~~in which~~
18 ~~the~~] by each professional fundraising counsel or professional
19 solicitor [~~does business in or from the State~~] and shall be
20 effective until June 30 of the next calendar year. The renewal
21 statement shall be in a form prescribed by the attorney general.
22 A renewal fee of \$250, or in any amount and with any additional

1 sums as may be prescribed by the attorney general, shall
2 accompany the renewal statement.

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

15 (c) The attorney general shall examine each registration
16 statement and supporting document filed by a professional
17 fundraising counsel or professional solicitor and shall
18 determine whether the registration requirements are satisfied.
19 If the attorney general determines that the registration
20 requirements are not satisfied, the attorney general shall
21 notify the professional fundraising counsel or professional
22 solicitor in writing within fifteen business days of its receipt

1 of the registration statement; otherwise the registration
2 statement is deemed to be approved. Within seven business days
3 after receipt of a notification that the registration
4 requirements are not satisfied, the professional fundraising
5 counsel or professional solicitor may request a hearing.

6 (d) The attorney general may adopt rules as needed for the
7 effective implementation of this section, including but not
8 limited to providing for the extension of filing deadlines, for
9 the online availability of forms required to be filed, and for
10 the electronic filing of required registration statements,
11 contracts, forms, and reports, including the acceptance of
12 electronic signatures. The attorney general may mandate
13 electronic filing and may provide, in the attorney general's
14 discretion, for exceptions to mandatory electronic filing."

15 SECTION 6. Section 467B-12.5, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) There shall be a written contract between a charitable
18 organization and a professional fundraising counsel or
19 professional solicitor that shall be filed by the professional
20 fundraising counsel or professional solicitor with the attorney
21 general at least ten business days prior to the performance by
22 the professional fundraising counsel or professional solicitor of

1 any service. No solicitation or service pursuant to the contract
2 shall begin before the contract is filed with the attorney
3 general. The contract shall be signed by two authorized
4 officials of the charitable organization, one of whom shall be a
5 member of the organization's governing body, and the authorized
6 contracting officer for the professional fundraising counsel or
7 professional solicitor. The contract shall contain all of the
8 following provisions:

- 9 (1) The legal name and address of the charitable
10 organization;
- 11 (2) A statement of the charitable purpose for which the
12 solicitation campaign is being conducted;
- 13 (3) A statement of the respective obligations of the
14 professional fundraising counsel or professional
15 solicitor and the charitable organization;
- 16 (4) A statement of the guaranteed minimum percentage of the
17 gross receipts from contributions that will be remitted
18 to or retained by the charitable organization, if any,
19 or, if the solicitation involves the sale of goods,
20 services, or tickets to a fundraising event, the
21 percentage of the purchase price that will be remitted
22 to the charitable organization, if any. The stated

1 percentage shall exclude any amount that the charitable
2 organization is to pay as fundraising costs;

3 (5) Information concerning the compensation of the
4 professional solicitor and fundraising counsel as
5 follows:

6 (A) If the compensation of the professional
7 fundraising counsel or professional solicitor is
8 contingent upon the number of contributions or the
9 amount of revenue received, a statement shall be
10 included specifying the percentage of the gross
11 revenue that is the basis for that compensation.
12 The stated percentage shall include any amount
13 that the professional fundraising counsel or
14 professional solicitor is to be reimbursed for
15 fundraising costs;

16 (B) If the compensation of the professional solicitor
17 is not contingent upon the number of contributions
18 or amount of revenue received from the
19 solicitation campaign, the compensation shall be
20 expressed as a reasonable estimate of the
21 percentage of the gross revenue, and the contract
22 shall clearly disclose the assumptions upon which

1 the estimate is based. The stated assumptions
2 shall be based upon all of the relevant facts
3 known to the professional solicitor regarding the
4 solicitation to be conducted by the professional
5 solicitor; or

6 (C) If the compensation of the fundraising counsel is
7 not contingent on the number of contributions or
8 amount of revenue received from the solicitation
9 campaign, the compensation shall be stated in a
10 dollar amount;

11 (6) The effective and termination dates of the contract or,
12 if the contract does not have a set termination date, a
13 clause allowing either party a reasonable period to
14 terminate the contract or notify the other party if
15 either party chooses not to renew. The contract shall
16 also contain the date services will commence with
17 respect to solicitation in this State of contributions
18 for a charitable organization;

19 (7) [A] In the case of a professional fundraising counsel,
20 a statement that the professional fundraising counsel
21 [~~or professional solicitor~~] will not at any time have
22 custody or control of contributions;

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1 (8) A statement that the charitable organization exercises
2 control and approval over the content and volume of any
3 solicitation; and

4 (9) Any other information required by the rules of the
5 attorney general."

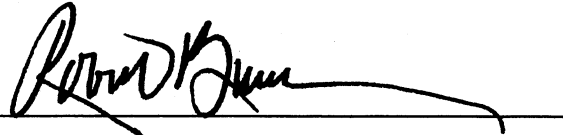
6 SECTION 7. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY:



11

BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES.

PURPOSE: The purposes of this bill are to amend chapter 467B, Hawaii Revised Statutes (HRS), to: (1) require professional solicitors to disclose to contributors whether a donation will be tax deductible and their full legal name, address and phone number; (2) adopt clarifying amendments to the definitions of "professional solicitor" and "professional fundraising counsel" to make these terms more understandable and easier to apply; (3) adopt clarifying amendments to the definition of "solicit" to provide that persons who prepare or submit grant applications to other charitable organizations are not thereby soliciting contributions and required to register with the Attorney General; (4) amend section 467B-2.5(a), HRS, to clarify that the end of campaign financial report shall be signed under penalties provided in section 710-1063, (5) amend section 467B-9.7, HRS, to allow the Attorney General to suspend or revoke any registration where the registrant has failed to file, or filed an incomplete financial report as required by section 467B-2.5, HRS; (6) clarify that any person contesting administrative remedies imposed by the Attorney General must request a hearing within ten days of service of the notice of action; (7) adopt clarifying amendments to section 467B-12(a), HRS, by deleting the requirement for the registrant to furnish the names and social security numbers of all agents and employees and to eliminate the requirement that the registration statement be signed under oath or affirmation; (8) create a new subsection (c) of section 467B-12, HRS, to authorize the Attorney General to adopt rules providing for the electronic filing of registrations, forms, reports, and contracts and the acceptance of electronic signatures and authorizing the Attorney General to mandate electronic filing; and (9) amend section 467B-12.5(2), HRS, to clarify that the requirement mandating that contracts provide that the fundraiser will not have custody or control of contributions applies

only to professional fundraising counsels and not to professional solicitors.

MEANS: Add one new section to chapter 467B and amend sections 467B-1, 467B-2.5(a), 467B-9.7 (a) and (c), 467B-12, and 467B-12.5(a), Hawaii Revised Statutes.

JUSTIFICATION: Federal law requires certain exempt organizations to disclose in solicitations whether charitable donations are tax deductible, but there is no requirement that a non-tax exempt charity make a similar disclosure. This bill will fill this gap by requiring solicitors for organizations soliciting for ostensible charitable purposes but who are not tax exempt to clearly disclose whether a contribution is deductible. Amendments proposed by this bill will prevent solicitors from using fictitious names by requiring the disclosure of the name address and phone number of any solicitor. Other amendments in this bill will clarify important definitions of "professional solicitor," "professional fundraising counsel," and "solicit" so that, among other things, individuals who solely prepare or submit grant applications to other charitable organizations (grant writers) will not have to incur the cost and expense of registration and filing a surety bond and clarifying that any person who is an independent contractor of a solicitor and engaged in solicitation, must also register. In addition, section 467B-12(b), HRS, is being amended to delete the onerous requirement that registrants provide the names and social security numbers of all agents and employees and to provide a late fee for the failure to timely renew an annual registration. Finally, subsection (b) of section 467B-12.5, HRS is being amended to clarify that the requirement mandating that contracts provide that the fundraiser will not have custody or control of contributions, shall only apply to professional fundraising counsels. Section 467B-2.5, HRS requires professional solicitors to deposit any funds in an account controlled by the charitable organization within five days of receipt.

This measure will also provide that the Attorney General may suspend or revoke a

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registration should the registrant fail to submit the financial report, or submit an incomplete financial report, required by section 467B-2.5, HRS. Without this new provision, there is no penalty for noncompliance. This measure also clarifies that any person wishing to contest administrative action taken by the attorney general must request a hearing with ten days of service of the notice of administrative action. Current law provides no deadline to request review.

Because the Legislature did not authorize any new positions within the Department of the Attorney General to administer and enforce chapter 467B, HRS, the Department has developed an Internet-based registration, bonding, and payment system that will be used by all registrants in 2006 to renew their registrations and bonds and file financial reports. This bill will give the Attorney General the authority to mandate electronic filing of registrations, forms, and reports. The State of Colorado has similar requirements.

Impact on the public: There would be no direct impact on the public. The legislation would impact professional solicitors and professional fundraising counsel.

Impact on the department and other agencies: None.

GENERAL FUND:	None.
OTHER FUNDS:	The Solicitation of Funds for Charitable Purposes Special Fund.
PPBS PROGRAM DESIGNATION:	ATG-100
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	July 1, 2006.