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# 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 professional solicitor who makes an oral solicitation by  
6 telephone, door-to-door, or otherwise shall furnish to each  
7 contributor, prior to collecting or attempting to collect any  
8 contribution, a written confirmation of the expected  
9 contribution, containing 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  
15 tax-deductible, if applicable, or, if the professional  
16 solicitor maintains that the contribution is tax-  
17 deductible in whole or in part, the portion of the



1           contribution that the professional solicitor maintains  
2           is tax-deductible."

3           SECTION 2. Section 467B-1, Hawaii Revised Statutes, is  
4 amended by amending the definitions of "contribution",  
5 "professional fund-raising counsel" or "professional fundraising  
6 counsel", and "professional solicitor" to read as follows:

7           ""Contribution" means the promise or grant of any money or  
8 property of any kind or value, including the promise to pay,  
9 except payments by members of a charitable organization for  
10 membership fees, dues, fines, or assessments, or for services  
11 rendered to individual members, if membership in the charitable  
12 organization confers a bona fide right, privilege, professional  
13 standing, honor, or other direct benefit, other than the right  
14 to vote, elect officers, or hold offices, and except money or  
15 property received from any governmental authority~~[,]~~, or a grant  
16 or subsidy from any organization exempt from taxation under  
17 Section 501(c)(3) of the Internal Revenue Code.

18           "Professional fund-raising counsel" or "professional  
19 fundraising counsel" means any person who, for ~~[a fee,]~~  
20 compensation, plans, conducts, manages, ~~[carries on,]~~ advises,  
21 consults, or ~~[acts as a consultant, whether directly or~~  
22 ~~indirectly, in connection with soliciting]~~ prepares material

1 for, or with respect to, the solicitation of contributions in  
2 this state for [~~or on behalf of any~~] a charitable organization,  
3 but who actually solicits no contributions as a part of the  
4 person's services[~~], and who does not employ, procure, or~~  
5 engage any compensated person to solicit contributions. The  
6 term [~~includes~~] shall not include a bona fide volunteer,  
7 salaried officer, or employee of a charitable organization [~~if~~  
8 ~~the bona fide volunteer, salaried officer, or employee of the~~  
9 ~~charitable organization receives percentage compensation~~].

10 "Professional solicitor" means any person who, for a  
11 financial or other consideration, solicits contributions in this  
12 state for [~~or on behalf of~~] a charitable organization[~~], or any~~  
13 person with whom the professional solicitor independently  
14 contracts to solicit for contributions. A person who is  
15 otherwise a professional fundraising counsel shall be deemed a  
16 professional solicitor if the person's compensation is related  
17 to the amount of contributions received. The term does not  
18 include a bona fide volunteer. The term includes a [~~bona fide~~  
19 ~~volunteer,~~] salaried officer[~~]~~ or employee of a charitable  
20 organization if the [~~bona fide volunteer,~~] salaried officer[~~]~~  
21 or employee of the charitable organization receives percentage  
22 compensation. The term does not include an attorney, investment



1 counselor or advisor, financial advisor, or banker, or other  
2 person who:

3 (1) Advises another person to make a contribution to a  
4 charitable organization as part of the person's  
5 employment; and

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

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

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

1 records, which shall be available for inspection upon demand by  
2 the attorney general:

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

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

15 1. By amending subsection (a) to read:

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

1 (1) Has violated or is operating in violation of [~~any~~  
2 ~~provision of~~] this chapter, the rules of the attorney  
3 general, or an order issued by the attorney general;

4 (2) Has refused or failed, after notice, to produce any  
5 records of the organization or to disclose any  
6 information required to be disclosed under this  
7 chapter or the rules of the attorney general; [~~or~~]

8 (3) Has made a material false statement in an application,  
9 statement, or report required to be filed under this  
10 chapter~~[-]~~; or

11 (4) Has failed to file the financial report required by  
12 section 467B-2.5, or filed an incomplete financial  
13 report."

14 2. By amending subsection (c) to read:

15 "~~(c) [All actions of the attorney general shall be taken~~  
16 ~~subject to the right of notice, hearing, and adjudication and~~  
17 ~~the right of appeal therefrom in accordance with chapter 91.]~~

18 Any person aggrieved by an action of the attorney general under  
19 this section may request a hearing to review that action in  
20 accordance with chapter 91 and rules adopted by the attorney  
21 general. Any request for hearing shall be made within ten days  
22 after the attorney general has served the person with notice of

1 the action, which notice shall be deemed effective upon  
2 mailing."

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

5 "**§467B-12 Filing requirements for professional fundraising**  
6 **counsel and professional solicitors.** (a) Every professional  
7 fundraising counsel or professional solicitor, prior to any  
8 solicitation, shall [~~file a registration statement~~] register  
9 with the department. The registration statement shall be [~~in~~  
10 ~~writing under oath or affirmation~~] in the form prescribed by the  
11 attorney general and shall contain the information as the  
12 attorney general may require. The registration statement shall  
13 be accompanied by a fee in the amount of \$250, or in the amount  
14 and with any additional sums as may be prescribed by the  
15 attorney general. The statement shall list the names[~~7~~] and  
16 addresses[~~7~~ ~~and social security numbers~~] of all owners,  
17 officers, [~~agents, servants, employees,~~] and directors[~~7~~ ~~and~~  
18 ~~independent contractors~~] of a professional fundraising counsel,  
19 and the names[~~7~~] and addresses[~~7~~ ~~and social security numbers~~] of  
20 all owners, officers, [~~agents, servants, employees,~~] and  
21 directors[~~7~~ ~~and independent contractors~~] of a professional  
22 solicitor. Renewal statements shall be filed with the



1 department on or before July 1 of each calendar year [~~in which~~  
2 ~~the~~] by each professional fundraising counsel or professional  
3 solicitor [~~does business in or from the State~~] and shall be  
4 effective until June 30 of the next calendar year. The renewal  
5 statement shall be in a form prescribed by the attorney general.  
6 A renewal fee of \$250, or in any amount and with any additional  
7 sums as may be prescribed by the attorney general, shall  
8 accompany the renewal statement.

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

21 (c) The attorney general shall examine each registration  
22 statement and supporting document filed by a professional



1 fundraising counsel or professional solicitor and shall  
2 determine whether the registration requirements are satisfied.  
3 If the attorney general determines that the registration  
4 requirements are not satisfied, the attorney general shall  
5 notify the professional fundraising counsel or professional  
6 solicitor in writing within fifteen business days of its receipt  
7 of the registration statement; otherwise the registration  
8 statement is deemed to be approved. Within seven business days  
9 after receipt of a notification that the registration  
10 requirements are not satisfied, the professional fundraising  
11 counsel or professional solicitor may request a hearing.

12 (d) The attorney general may adopt rules to provide for:

13 (1) The extension of filing deadlines;

14 (2) The online availability of forms required to be filed;

15 (3) The electronic filing of required registration

16 statements, contracts, forms, and reports; and

17 (4) The acceptance of electronic signatures."

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

20 "(a) There shall be a written contract between a  
21 charitable organization and a professional fundraising counsel  
22 or professional solicitor that shall be filed by the



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

- 13 (1) The legal name and address of the charitable  
14 organization;
- 15 (2) A statement of the charitable purpose for which the  
16 solicitation campaign is being conducted;
- 17 (3) A statement of the respective obligations of the  
18 professional fundraising counsel or professional  
19 solicitor and the charitable organization;
- 20 (4) A statement of the guaranteed minimum percentage of  
21 the gross receipts from contributions that will be  
22 remitted to or retained by the charitable

1 organization, if any, or, if the solicitation involves  
2 the sale of goods, services, or tickets to a  
3 fundraising event, the percentage of the purchase  
4 price that will be remitted to the charitable  
5 organization, if any. The stated percentage shall  
6 exclude any amount that the charitable organization is  
7 to pay as fundraising costs;

8 (5) Information concerning the compensation of the  
9 professional solicitor and fundraising counsel as  
10 follows:

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

21 (B) If the compensation of the professional solicitor  
22 is not contingent upon the number of

1 contributions or amount of revenue received from  
2 the solicitation campaign, the compensation shall  
3 be expressed as a reasonable estimate of the  
4 percentage of the gross revenue, and the contract  
5 shall clearly disclose the assumptions upon which  
6 the estimate is based. The stated assumptions  
7 shall be based upon all of the relevant facts  
8 known to the professional solicitor regarding the  
9 solicitation to be conducted by the professional  
10 solicitor; or

11 (C) If the compensation of the fundraising counsel is  
12 not contingent on the number of contributions or  
13 amount of revenue received from the solicitation  
14 campaign, the compensation shall be stated in a  
15 dollar amount;

16 (6) The effective and termination dates of the contract  
17 or, if the contract does not have a set termination  
18 date, a clause allowing either party a reasonable  
19 period to terminate the contract or notify the other  
20 party if either party chooses not to renew. The  
21 contract shall also contain the date services will



1           commence with respect to solicitation in this State of  
2           contributions for a charitable organization;

3           (7) [A] In the case of a professional fundraising counsel,  
4           a statement that the professional fundraising counsel  
5           ~~[or professional solicitor]~~ will not at any time have  
6           custody or control of contributions;

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

10          (9) Any other information required by the rules of the  
11          attorney general."

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

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

**Report Title:**

Charitable Funds; Solicitation

**Description:**

Requires professional solicitors to disclose to contributors whether a donation will be tax deductible and solicitors' full legal name, address and phone number. Adopts amendments to the definitions of "contribution," "professional fundraising counsel," and "professional solicitor." Allows the attorney general to suspend or revoke any registration where the registrant has failed to file, or filed an incomplete financial report as required. (CD1)

