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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 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  
15 tax-deductible, if such disclosure is applicable, or,  
16 if the professional solicitor maintains that the  
17 contribution is tax-deductible in whole or in part,

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

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

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

8           ""Professional fund-raising counsel" or "professional  
9 fundraising counsel" means any person who~~[,]~~ for ~~[a fee,~~  
10 compensation, plans, conducts, manages, ~~[carries on,~~ advises,  
11 consults, or ~~[acts as a consultant whether directly or~~  
12 ~~indirectly, in connection with soliciting]~~ prepares material  
13 for, or respect to, the solicitation of contributions in this  
14 State for ~~[or on behalf of any]~~ a charitable organization, but  
15 who actually solicits no contributions as a part of the person's  
16 services~~[,]~~, and who does not employ, procure, or engage any  
17 compensated person to solicit contributions. The term  
18 ~~[includes]~~ shall not include a bona fide volunteer, salaried  
19 officer, or employee of a charitable organization ~~[if the bona~~  
20 ~~fide volunteer, salaried officer, or employee of the charitable~~  
21 ~~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 with whom the professional solicitor independently  
7 contracts to solicit for contributions. A person who is  
8 otherwise a professional fundraising counsel shall be deemed a  
9 professional solicitor if the person's compensation is related  
10 to the amount of contributions received. The term does not  
11 include a bona fide volunteer. The term includes a [~~bona fide~~  
12 volunteer,] salaried officer[~~]~~ or employee of a charitable  
13 organization if the [~~bona fide volunteer,~~] salaried officer[~~]~~  
14 or employee of the charitable organization receives percentage  
15 compensation. The term does not include an attorney, investment  
16 counselor or advisor, financial advisor, or banker, or other  
17 person who:

- 18           (1) Advises another person to make a contribution to a  
19 charitable organization as part of the person's  
20 employment; and  
21           (2) Does not receive compensation from the charitable  
22 organization for that advice."



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.

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           (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; [~~or~~]  
 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[~~7~~] and  
10 addresses[~~7~~ ~~and social security numbers~~] of all owners,  
11 officers, [~~agents, servants, employees,7~~] and directors[~~7~~ ~~and~~  
12 ~~independent contractors~~] of a professional fundraising counsel,  
13 and the names[~~7~~] and addresses[~~7~~ ~~and social security numbers~~] of  
14 all owners, officers, [~~agents, servants, employees,7~~] and  
15 directors[~~7~~ ~~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  
18 charitable organization and a professional fundraising counsel  
19 or professional solicitor that shall be filed by the  
20 professional fundraising counsel or professional solicitor with  
21 the attorney general at least ten business days prior to the  
22 performance by the professional fundraising counsel or



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

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



1 price that will be remitted to the charitable  
2 organization, if any. The stated percentage shall  
3 exclude any amount that the charitable organization is  
4 to pay as fundraising costs;

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

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

18 (B) If the compensation of the professional solicitor  
19 is not contingent upon the number of  
20 contributions or amount of revenue received from  
21 the solicitation campaign, the compensation shall  
22 be expressed as a reasonable estimate of the



1 percentage of the gross revenue, and the contract  
2 shall clearly disclose the assumptions upon which  
3 the estimate is based. The stated assumptions  
4 shall be based upon all of the relevant facts  
5 known to the professional solicitor regarding the  
6 solicitation to be conducted by the professional  
7 solicitor; or

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

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

21 (7) [A] In the case of a professional fundraising counsel,  
22 a statement that the professional fundraising counsel

1           ~~[or professional solicitor]~~ will not at any time have  
2           custody or control of contributions;

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

6           (9) Any other information required by the rules of the  
7           attorney general."

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

10          SECTION 8. This Act shall take effect upon its 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 clarifying amendments to the definition of "solicit." 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. (SD1)

