
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, containing
9 the following information clearly and conspicuously:

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

13 (2) A disclosure that the contribution is not
14 tax-deductible, if applicable, or, if the professional
15 solicitor maintains that the contribution is tax-
16 deductible in whole or in part, the portion of the
17 contribution that the professional solicitor maintains
18 is tax-deductible."



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

3 1. By amending the definition of "contribution" to read as
4 follows:

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

16 2. By amending the definition of "professional
17 fund-raising counsel" or "professional fundraising counsel" to
18 read as follows:

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



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

11 3. By amending the definition of "professional solicitor"
 12 to read as follows:

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

1 organization if the [~~bona fide volunteer,~~] salaried officer[7]
2 or employee of the charitable organization receives percentage
3 compensation. The term does not include an attorney, investment
4 counselor or advisor, financial advisor, or banker, or other
5 person who:

6 (1) Advises another person to make a contribution to a
7 charitable organization as part of the person's
8 employment; and

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

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

13 "(a) Within ninety days after a solicitation campaign or
14 event has been completed and on the anniversary of the
15 commencement of a solicitation campaign lasting more than one
16 year, a professional solicitor shall file with the attorney
17 general a financial report for the campaign, including gross
18 revenue and an itemization of all expenses incurred. This
19 report shall be signed [~~and sworn to~~] under penalty provided by
20 section 710-1063 by the authorized contracting agent for the
21 professional solicitor and two authorized officials of the
22 charitable organization. A professional solicitor shall



1 maintain during each solicitation campaign and for not less than
2 three years after the completion of that campaign the following
3 records, which shall be available for inspection upon demand by
4 the attorney general:

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

7 (2) The name and residence of each employee, agent, or
8 other person involved in the solicitation;

9 (3) Records of all revenue received and expenses incurred
10 in the course of the solicitation campaign; and

11 (4) The location and account number of each bank or other
12 financial institution account in which the
13 professional solicitor has deposited revenue from the
14 solicitation campaign."

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

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

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



1 organization, professional fundraising counsel, or professional
2 solicitor, or an agent, servant, or employee thereof:

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

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

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

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

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

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

20 Any person aggrieved by an action of the attorney general under
21 this section may request a hearing to review that action in
22 accordance with chapter 91 and rules adopted by the attorney



1 general. Any request for hearing shall be made within ten days
2 after the attorney general has served the person with notice of
3 the action, which notice shall be deemed effective upon
4 mailing."

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

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



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

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



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

14 (d) The attorney general may adopt rules to provide for
15 the:

16 (1) Extension of filing deadlines;

17 (2) Online availability of forms required to be filed;

18 (3) Electronic filing of required registration statements,
19 contracts, forms, and reports; and

20 (4) Acceptance of electronic signatures."

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



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

- 16 (1) The legal name and address of the charitable
17 organization;
- 18 (2) A statement of the charitable purpose for which the
19 solicitation campaign is being conducted;
- 20 (3) A statement of the respective obligations of the
21 professional fundraising counsel or professional
22 solicitor and the charitable organization;



1 (4) A statement of the guaranteed minimum percentage of
2 the gross receipts from contributions that will be
3 remitted to or retained by the charitable
4 organization, if any, or, if the solicitation involves
5 the sale of goods, services, or tickets to a
6 fundraising event, the percentage of the purchase
7 price that will be remitted to the charitable
8 organization, if any. The stated percentage shall
9 exclude any amount that the charitable organization is
10 to pay as fundraising costs;

11 (5) Information concerning the compensation of the
12 professional solicitor and fundraising counsel as
13 follows:

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



1 fundraising counsel or professional solicitor is
2 to be reimbursed for fundraising costs;

3 (B) If the compensation of the professional solicitor
4 is not contingent upon the number of
5 contributions or amount of revenue received from
6 the solicitation campaign, the compensation shall
7 be expressed as a reasonable estimate of the
8 percentage of the gross revenue, and the contract
9 shall clearly disclose the assumptions upon which
10 the estimate is based. The stated assumptions
11 shall be based upon all of the relevant facts
12 known to the professional solicitor regarding the
13 solicitation to be conducted by the professional
14 solicitor; or

15 (C) If the compensation of the fundraising counsel is
16 not contingent on the number of contributions or
17 amount of revenue received from the solicitation
18 campaign, the compensation shall be stated in a
19 dollar amount;

20 (6) The effective and termination dates of the contract
21 or, if the contract does not have a set termination
22 date, a clause allowing either party a reasonable



1 period to terminate the contract or notify the other
2 party if either party chooses not to renew. The
3 contract shall also contain the date services will
4 commence with respect to solicitation in this State of
5 contributions for a charitable organization;

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

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

13 (9) Any other information required by the rules of the
14 attorney general."

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

17 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 "contribution." 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. (SD2)

