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# A BILL FOR AN ACT

RELATING TO CHARITABLE ORGANIZATIONS.

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

1 SECTION 1. This Act shall be known as the Charitable  
2 Giving Protection Act of 2008.

3 SECTION 2. Chapter 467B, Hawaii Revised Statutes, is  
4 amended by adding four new sections to be appropriately  
5 designated and to read as follows:

6 **"§467B-A Registration of charitable organizations prior to**  
7 **solicitation.** (a) Every public benefit corporation domiciled  
8 in Hawaii and every charitable organization not exempted by  
9 section 467B-C shall register with the department prior to  
10 conducting any solicitation or prior to having any solicitation  
11 conducted on its behalf by others. Two authorized officers of  
12 the charitable organization shall sign the registration form and  
13 shall certify that the statements therein are true and correct  
14 to the best of their knowledge subject to penalties imposed by  
15 section 710-1063. A chapter, branch, or affiliate in this state  
16 of a registered parent organization shall not be required to  
17 register if the principal office of the parent organization is  
18 located in this state and if the parent organization files a



1 consolidated annual report for itself and its chapter, branch,  
2 or affiliate.

3 (b) The attorney general may make available a registration  
4 form to assist in the registration by charitable organizations  
5 that must register in other states and may designate the uniform  
6 registration statement developed by the National Association of  
7 State Charity Officials as the registration form under this  
8 section.

9 (c) The attorney general may require that registration  
10 forms be filed with the department electronically and may  
11 require the use of electronic signatures.

12 **§467B-B Annual financial reports; fiscal records and fees.**

13 (a) Every charitable organization required to register pursuant  
14 to section 467B-A shall annually file with the department a  
15 report for its most recently completed fiscal year, which report  
16 shall include a financial statement and such other information  
17 as the department may require. The charitable organization  
18 shall file the report not more than four months following the  
19 close of its fiscal year, which report shall be accompanied by a  
20 fee as prescribed by subsection (d) and shall be signed by two  
21 authorized officers of the organization, one of whom shall be  
22 the chief fiscal officer of the organization. Such officers



1 shall certify that the report is true and correct to the best of  
2 their knowledge. The department shall prescribe the form of the  
3 report and may prescribe standards for its completion. The  
4 department may accept, under such conditions as the attorney  
5 general may prescribe, a copy or duplicate original of financial  
6 statements, reports, or returns filed by the charitable  
7 organization with the Internal Revenue Service or another state  
8 having requirements similar to the provisions of this section.

9 (b) A charitable organization with gross revenue in excess  
10 of \$500,000 in the year covered by the report shall include with  
11 its financial statement an audit report prepared by a certified  
12 public accountant. For purposes of this section, gross revenue  
13 shall not include grants or fees from government agencies or the  
14 revenue derived from funds held in trust for the benefit of the  
15 organization.

16 (c) The department may, upon written request and for good  
17 cause shown, grant an extension of time, not to exceed three  
18 months, for the filing of such report.

19 (d) Each charitable organization filing a report required  
20 by this section shall pay to the department with such report, a  
21 fee based on the total amount of its income and receipts during



1 the time covered by the report at the close of the calendar or  
2 fiscal year adopted by the charitable organization as follows:

3 (1) \$10, if it received no income and receipts during the  
4 time covered by the report or if it received less than  
5 \$25,000;

6 (2) \$25, if \$25,000 or more but less than \$50,000;

7 (3) \$45, if \$50,000 or more but less than \$100,000;

8 (4) \$75, if \$100,000 or more but less than \$250,000;

9 (5) \$100, if \$250,000 or more but less than \$500,000;

10 (6) \$200, if \$500,000 or more but less than \$750,000;

11 (7) \$250, if \$750,000 or more but less than \$1,000,000;

12 (8) \$500, if \$1,000,000 or more but less than \$2,000,000;

13 or

14 (9) \$750, if \$2,000,000 or more.

15 (e) If the fee prescribed by subsection (d) is not paid  
16 when due or if the charitable organization fails to file a  
17 report by the date due, an administrative fine in the amount of  
18 \$50 shall be paid to the department.

19 (f) The attorney general may at any time after a fee or  
20 report is delinquent give written notice of the delinquency by  
21 certified mail to the charitable organization, requiring it to  
22 correct the delinquency and informing it of the attorney



1 general's authority to impose an additional administrative fine  
2 if it fails to do so within a specified number of days  
3 thereafter, but not less than ten. Thereafter, unless the fee,  
4 including the administrative fine prescribed by subsection (d)  
5 or the report, or both, are filed within the specified number of  
6 days, the attorney general may impose an additional  
7 administrative fine, not exceeding the greater of \$300 or twice  
8 the fee prescribed by subsection (d) that is due with the  
9 delinquent report. Any person aggrieved by the imposition of an  
10 administrative fine under this section may seek review of the  
11 penalty as provided in section 467B-9.7(c). In such a  
12 proceeding, the order shall be reversed or modified only if the  
13 attorney general lacked authority to impose the administrative  
14 fine or the amount of the administrative fine imposed was  
15 unconscionable in the circumstances.

16 (g) Every charitable organization required to file an  
17 annual report and every charitable organization subject to  
18 sections 467B-A and 467B-B shall keep true fiscal records that  
19 shall be available to the department for inspection upon  
20 request. Such organization shall retain such records for no  
21 less than three years after the end of the fiscal year to which  
22 they relate.



1        §467B-C Charitable organizations exempted from  
2 registration and financial disclosure requirements. The  
3 following charitable organizations shall not be subject to  
4 sections 467B-A and 467B-B, if each such organization submits  
5 such information as the department may require to substantiate  
6 an exemption under this section:

- 7        (1) Any duly organized religious corporation, institution,  
8        or society;
- 9        (2) Any parent-teacher association or educational  
10       institution, the curricula of which in whole or in  
11       part are registered or approved by any state or the  
12       United States either directly or by acceptance of  
13       accreditation by an accrediting body;
- 14       (3) Any nonprofit hospital licensed by the State or any  
15       similar provision of the laws of any other state;
- 16       (4) Any governmental unit or instrumentality of any state  
17       or the United States;
- 18       (5) Any person who solicits solely for the benefit of  
19       organizations described in paragraphs (1) to (4); and
- 20       (6) Any charitable organization that normally receives  
21       less than \$25,000 in contributions annually, if the



1           organization does not compensate any person primarily  
2           to conduct solicitations.

3           **§467B-D Investigations; subpoenas; court orders.** (a) The  
4           department, on its own motion or on complaint of any person, may  
5           conduct an investigation to determine whether any person has  
6           violated or is about to violate any provision of sections 467B-  
7           A, 467B-B, and 467B-9.

8           (b) The attorney general or the attorney general's  
9           authorized representative may subpoena documentary material  
10           relating to any matter under investigation, issue subpoenas to  
11           any person involved in or who may have knowledge of any matter  
12           under investigation, administer an oath or affirmation to any  
13           person and conduct hearings on any matter under investigation.

14           (c) If any person fails to obey any subpoena issued by the  
15           department pursuant to this section, the department may, after  
16           notice, apply to the circuit court for the first circuit, State  
17           of Hawaii, for, and after a hearing on the application the court  
18           may issue, an order requiring such person to obey such subpoena  
19           or any part thereof, together with such other relief as may be  
20           appropriate. Any disobedience of any order entered under this  
21           section by any court shall be punished as a contempt thereof."



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

3 1. By adding a new definition of "gross revenue" to be  
4 appropriately inserted and to read as follows:

5 "Gross revenue" means income of any kind from all sources,  
6 including all amounts received as the result of any solicitation  
7 by a professional solicitor."

8 2. By amending the definition of "person" to read as  
9 follows:

10 "Person" means an individual, [~~organization, trust,~~  
11 ~~foundation, group, association, partnership, corporation,~~  
12 ~~society, or any combination thereof.] corporation, limited~~  
13 liability company, association, partnership, trust, foundation,  
14 or any other entity however styled."

15 SECTION 4. Section 467B-2.5, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17 "(a) Within ninety days after a solicitation campaign or  
18 event has been completed and on the anniversary of the  
19 commencement of a solicitation campaign lasting more than one  
20 year, a professional solicitor shall file with the attorney  
21 general a financial report for the campaign, including gross  
22 revenue and an itemization of all expenses incurred[~~-~~] on a form





1 prescribed by the attorney general. This report shall be signed  
2 under penalty provided by section 710-1063 by the authorized  
3 contracting agent for the professional solicitor and two  
4 authorized officials of the charitable organization[~~-~~] and shall  
5 report gross revenue from Hawaii donors and national gross  
6 revenue from any solicitation activity or campaign. A  
7 professional solicitor shall maintain during each solicitation  
8 campaign and for not less than three years after the completion  
9 of that campaign the following records, which shall be available  
10 for inspection upon demand by the attorney general:

- 11 (1) The date and amount of each contribution received and  
12 the name and address of each contributor;
- 13 (2) The name and residence of each employee, agent, or  
14 other person involved in the solicitation;
- 15 (3) Records of all revenue received and expenses incurred  
16 in the course of the solicitation campaign; and
- 17 (4) The location and account number of each bank or other  
18 financial institution account in which the  
19 professional solicitor has deposited revenue from the  
20 solicitation campaign."

21 SECTION 5. Section 467B-5.5, Hawaii Revised Statutes, is  
22 amended by amending subsection (b) to read as follows:



1           "(b) Prior to the commencement of any charitable sales  
2 promotion in this State conducted by a commercial co-venturer  
3 using the name of a charitable organization, the commercial co-  
4 venturer shall obtain the written consent of the charitable  
5 organization whose name will be used during the charitable sales  
6 promotion. The commercial co-venturer shall file a copy of the  
7 written consent with the department not less than ten days prior  
8 to the commencement of the charitable sales promotion within  
9 this state. An authorized representative of the charitable  
10 organization and the commercial co-venturer shall sign the  
11 written consent and the terms of the written consent shall  
12 include the following:

- 13           (1) The goods or services to be offered to the public;  
14           (2) The geographic area where, and the starting and final  
15                 date when, such offering is to be made;  
16           (3) The manner in which the name of the charitable  
17                 organization is to be used, including any  
18                 representation to be made to the public as to the  
19                 amount or per cent per unit of goods or services  
20                 purchased or used that is to benefit the charitable  
21                 organization;



1       (4) A provision for a final accounting on a per unit basis  
2       to be given by the commercial co-venturer to the  
3       charitable organization and the date when it is to be  
4       made; and

5       (5) The date when and the manner in which the benefit is  
6       to be conferred on the charitable organization."

7       SECTION 6. Section 467B-9, Hawaii Revised Statutes, is  
8 amended to read as follows:

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

15       A person shall be deemed to have used the name of another  
16 person for the purpose of soliciting contributions if the latter  
17 person's name is listed on any stationery, advertisement,  
18 brochure, or correspondence in or by which a contribution is  
19 solicited by or on behalf of a charitable organization or the  
20 latter person's name is listed or referred to in connection with  
21 a request for a contribution as one who has contributed to,



1 sponsored, or endorsed the charitable organization or its  
2 activities.

3 (b) No charitable organization, professional solicitor, or  
4 professional fundraising counsel soliciting contributions shall  
5 use a name, symbol, or statement so closely related or similar  
6 to that used by another charitable organization or governmental  
7 agency that the use thereof would tend to confuse or mislead the  
8 public.

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

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

19 (1) The professional solicitor has obtained the written  
20 authorization of two officers of the organization,  
21 which authorization shall bear the signature of the  
22 professional solicitor and the officers of the



1 charitable organization and shall expressly state on  
2 its face the period for which it is valid, which shall  
3 not exceed one year from the date of issuance, and has  
4 filed a copy of the written authorization with the  
5 attorney general prior to the solicitation; and

6 (2) The professional solicitor and any person who, for  
7 compensation, acts as an agent, employee, independent  
8 contractor, or otherwise on behalf of the professional  
9 solicitor carries a copy of the authorization while  
10 conducting solicitations, and exhibits it on request  
11 to persons solicited or police officers or agents of  
12 the department.

13 (e) No charitable organization, professional fundraising  
14 counsel, or professional solicitor subject to this chapter shall  
15 use or exploit the fact of filing any statement, report,  
16 professional fundraising counsel contracts, or professional  
17 solicitor contracts or other documents or information required  
18 to be filed under this chapter or with the department so as to  
19 lead the public to believe that the filing in any manner  
20 constitutes an endorsement or approval by the State of the  
21 purposes or goals for the solicitation by the charitable  
22 organization, professional fundraising counsel, or professional



1 solicitor; provided that the use of the following statement  
 2 shall not be deemed a prohibited exploitation: "Information  
 3 regarding this organization has been filed with the State of  
 4 Hawaii department of the attorney general. Filing does not  
 5 imply endorsement or approval of the organization or the public  
 6 solicitation for contributions."

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

11 (g) No person shall submit for filing on behalf of any  
 12 charitable organization, professional fundraising counsel, or  
 13 professional solicitor, any statement, financial statement,  
 14 report, attachment, or other information to be filed with the  
 15 department that contains information, statements, or omissions  
 16 that are false or misleading.

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



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

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

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

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

19 (m) No person shall receive compensation from a charitable  
20 organization for obtaining moneys or bequests for that  
21 charitable organization if that person has also received  
22 compensation for advising the donor to make the donation;



1 provided that compensation may be received if the person obtains  
2 the written consent of the donor to receive compensation from  
3 the charitable organization.

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

11 (o) No charitable organization shall use the services of  
12 an unregistered professional solicitor or professional  
13 fundraising counsel."

14 SECTION 7. Section 467B-9.7, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§467B-9.7 Administrative enforcement and penalties.** (a)  
17 The attorney general may refuse to register, may revoke, or may  
18 suspend the registration of any charitable organization,  
19 professional fundraising counsel, or professional solicitor  
20 whenever the attorney general finds that a charitable  
21 organization, professional fundraising counsel, or professional  
22 solicitor, or an agent, servant, or employee thereof:





- 1 (1) Has violated or is operating in violation of this  
2 chapter, the rules of the attorney general, or an  
3 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;
- 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 (b) When the attorney general finds that the registration  
15 of any person may be refused, suspended, or revoked under the  
16 terms of subsection (a), the attorney general may:
- 17 (1) Revoke a grant of exemption from any provisions of  
18 this chapter;
- 19 (2) Issue an order directing that the person cease and  
20 desist specified fundraising activities;
- 21 (3) Impose an administrative fine not to exceed \$1,000 for  
22 each act or omission that constitutes a violation of



1           this chapter and an additional penalty, not to exceed  
2           \$100, for each day during which the violation  
3           continues. Registration shall be automatically  
4           suspended upon final affirmation of an administrative  
5           fine until the fine is paid or until the normal  
6           expiration date of the registration. No registration  
7           shall be renewed until the fine is paid; or

8           (4) Place the registrant on probation for such period of  
9           time and subject to such conditions as the attorney  
10          general may determine.

11          (c) Any person aggrieved by an action of the attorney  
12          general under this section may request a hearing to review that  
13          action in accordance with chapter 91 and rules adopted by the  
14          attorney general. Any request for hearing shall be made within  
15          ten days after the attorney general has served the person with  
16          notice of the action, which notice shall be deemed effective  
17          upon mailing.

18          (d) The attorney general may apply to the circuit court  
19          for the first circuit, State of Hawaii, for relief and the court  
20          may issue a temporary injunction or a permanent injunction to  
21          restrain violations of this chapter, appoint a receiver, order  
22          restitution or an accounting, or grant such other relief as may



1 be appropriate to ensure the due application of charitable  
2 funds. Proceedings thereon shall be brought in the name of the  
3 State."

4 SECTION 8. Section 467B-12, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 **"§467B-12 Filing requirements for professional fundraising**  
7 **counsel and professional solicitors.** (a) Every professional  
8 fundraising counsel or professional solicitor, prior to any  
9 solicitation, shall register with the department. The  
10 registration statement [~~shall be in the form prescribed by the~~  
11 ~~attorney general and~~] shall contain the information [~~as the~~  
12 ~~attorney general may require.~~] set forth in subsection (e). The  
13 registration statement shall be accompanied by a fee in the  
14 amount of \$250, or in the amount and with any additional sums as  
15 may be prescribed by the attorney general. [~~The statement shall~~  
16 ~~list the names and addresses of all owners, officers, and~~  
17 ~~directors of a professional fundraising counsel, and the names~~  
18 ~~and addresses of all owners, officers, and directors of a~~  
19 ~~professional solicitor.~~] Renewal registration statements shall  
20 be filed with the department on or before July 1 of each  
21 calendar year by each professional fundraising counsel or  
22 professional solicitor [~~and shall be effective until June 30 of~~



1 ~~the next calendar year~~]. The renewal statement shall ~~[be in a~~  
2 ~~form prescribed by the attorney general.]~~ contain the  
3 information set forth in subsection (e). A renewal fee of \$250,  
4 or in any amount and with any additional sums as may be  
5 prescribed by the attorney general, shall accompany the renewal  
6 statement.

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

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



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

11 (d) The attorney general may ~~[adopt rules to provide for:~~  
12 ~~(1) The extension of filing deadlines;~~  
13 ~~(2) The online availability of forms required to be filed;~~  
14 ~~(3) The electronic filing of required registration~~  
15 ~~statements, contracts, forms, and reports; and~~  
16 ~~(4) The acceptance of electronic signatures.]~~ require that  
17 registration forms and renewal registrations, surety bonds, and  
18 contracts be filed with the department electronically and may  
19 require the use of electronic signatures.

20 (e) Each registration and renewal registration shall  
21 contain:



- 1        (1) The names and addresses of all owners, officers, and  
2                    directors of a professional fundraising counsel, and  
3                    the names and addresses of all owners, officers, and  
4                    directors of a professional solicitor;
- 5        (2) A statement concerning the corporate form of the  
6                    registrant, whether corporation, limited liability  
7                    corporation, partnership, or individual;
- 8        (3) A statement of whether the registrant has an office in  
9                    Hawaii and the name and phone number of the person in  
10                   charge of the office;
- 11       (4) The names and addresses of any individuals supervising  
12                   any solicitation activity;
- 13       (5) A statement of whether the registration has entered  
14                   into a consent agreement with, or been disciplined by  
15                   or subject to administrative action by, another  
16                   governmental agency;
- 17       (6) A statement of whether any officer, director, or any  
18                   person with a controlling interest in the registrant  
19                   has ever been convicted of a felony or a misdemeanor  
20                   involving dishonesty in a solicitation for a  
21                   charitable purpose;



1        (7) The date that the registrant began soliciting Hawaii  
2            residents on behalf of a charitable organization or  
3            providing professional fundraising counsel services;  
4            and

5        (8) A statement of whether any owners, directors, or  
6            officers are related to:

7            (A) Any other officers, directors, owners, or  
8            employees of the registrant;

9            (B) Any officer, director, trustee, or employee of a  
10           charitable organization under contract with the  
11           registrant; or

12           (C) Any vendor or supplier providing goods or  
13           services to a charitable organization under  
14           contract with the registrant."

15        SECTION 9. There is appropriated out of the solicitation  
16 of funds for charitable purposes special fund the sum of  
17 \$            , or so much thereof as may be necessary for fiscal  
18 year 2008-2009, for two permanent full-time equivalent (2.00  
19 FTE) deputy attorney general positions, one permanent full-time  
20 equivalent (1.00 FTE) auditor position, and one permanent full-  
21 time equivalent (1.00 FTE) legal assistant position.



1           The sum appropriated shall be expended by the department of  
2 the attorney general for the purposes of this Act.

3           SECTION 10. In codifying the new sections added to chapter  
4 467B, Hawaii Revised Statutes, by section 2 of this Act, the  
5 revisor of statutes shall substitute appropriate section numbers  
6 for the letters used in the designations of and references to  
7 those new sections in this Act.

8           SECTION 11. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10          SECTION 12. This Act shall take effect upon its approval;  
11 provided that section 2 of this Act shall take effect on January  
12 1, 2009.





**Report Title:**

Charitable Organizations; Attorney General

**Description:**

Requires most charitable organizations to register with the attorney general. (HB2308 HD1)

