

JAN 22 2008

---

# A BILL FOR AN ACT

RELATING TO THE PROTECTION OF CHARITABLE GIVING.

**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 be used as the registration form under  
8 this 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 such report is true and correct to the best  
2 of their knowledge. The department shall prescribe the form of  
3 the 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 but less than \$2,000,000; or

13 (9) \$750, if \$2,000,000 or more.

14 (e) If the fee prescribed by subsection (d) is not paid

15 when due or if the charitable organization fails to file a

16 report by the date due, an administrative fine in the amount of

17 \$50 shall be paid to the department.

18 (f) The attorney general may at any time after a fee or

19 report is delinquent give written notice of the delinquency by

20 certified mail to the charitable organization, requiring it to

21 correct the delinquency and informing it of the attorney

22 general's authority to impose an additional administrative fine

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

15 (g) Every charitable organization required to file an  
16 annual report and every charitable organization subject to  
17 sections 467B-A and 467B-B shall keep true fiscal records that  
18 shall be available to the department for inspection upon  
19 request. Such organization shall retain such records for no  
20 less than three years after the end of the fiscal year to which  
21 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 by adding new definitions to be appropriately inserted  
3 and to read as follows:

4 "Person" means an individual, corporation, limited  
5 liability company, association, partnership, trust, foundation,  
6 or any other entity however styled.

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

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

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



1 revenue from any solicitation activity or campaign. A  
2 professional solicitor shall maintain during each solicitation  
3 campaign and for not less than three years after the completion  
4 of that campaign the following records, which shall be available  
5 for inspection upon demand by the attorney general:

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

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

18 "(b) Prior to the commencement of any charitable sales  
19 promotion in this State conducted by a commercial co-venturer  
20 using the name of a charitable organization, the commercial co-  
21 venturer shall obtain the written consent of the charitable  
22 organization whose name will be used during the charitable sales

1 promotion. The commercial co-venturer shall file a copy of the  
2 written consent with the department not less than ten days prior  
3 to the commencement of the charitable sales promotion within  
4 this State. An authorized representative of the charitable  
5 organization and the commercial co-venturer shall sign the  
6 written consent and the terms of the written consent shall  
7 include the following: (1) the goods or services to be offered  
8 to the public; (2) the geographic area where, and the starting  
9 and final date when, such offering is to be made; (3) the manner  
10 in which the name of the charitable organization is to be used,  
11 including any representation to be made to the public as to the  
12 amount or per cent per unit of goods or services purchased or  
13 used that is to benefit the charitable organization; (4) a  
14 provision for a final accounting on a per unit basis to be given  
15 by the commercial co-venturer to the charitable organization and  
16 the date when it is to be made; and (5) the date when and the  
17 manner in which the benefit is to be conferred on the charitable  
18 organization."

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

21 "**§467B-9 Prohibited acts.** (a) No person, for the purpose  
22 of soliciting contributions from persons in the State, shall use

1 the name of any other person except that of an officer,  
2 director, or trustee of the charitable organization by or for  
3 which contributions are solicited, without the written consent  
4 of the other persons.

5 A person shall be deemed to have used the name of another  
6 person for the purpose of soliciting contributions if the latter  
7 person's name is listed on any stationery, advertisement,  
8 brochure, or correspondence in or by which a contribution is  
9 solicited by or on behalf of a charitable organization or the  
10 latter person's name is listed or referred to in connection with  
11 a request for a contribution as one who has contributed to,  
12 sponsored, or endorsed the charitable organization or its  
13 activities.

14 (b) No charitable organization, professional solicitor, or  
15 professional fundraising counsel soliciting contributions shall  
16 use a name, symbol, or statement so closely related or similar  
17 to that used by another charitable organization or governmental  
18 agency that the use thereof would tend to confuse or mislead the  
19 public.

20 (c) No person, in connection with any solicitation or  
21 sale, shall misrepresent or mislead anyone by any manner, means,  
22 practice, or device whatsoever, to believe that the solicitation

1 or sale is being conducted on behalf of a charitable  
2 organization or that the proceeds of the solicitation or sale  
3 will be used for charitable purposes, if that is not the fact.

4 (d) No professional solicitor, and no agent, employee,  
5 independent contractor, or other person acting on behalf of the  
6 professional solicitor, shall solicit in the name of or on  
7 behalf of any charitable organization unless:

8 (1) The professional solicitor has obtained the written  
9 authorization of two officers of the organization,  
10 which authorization shall bear the signature of the  
11 professional solicitor and the officers of the  
12 charitable organization and shall expressly state on  
13 its face the period for which it is valid, which shall  
14 not exceed one year from the date of issuance, and has  
15 filed a copy of the written authorization with the  
16 attorney general prior to the solicitation; and

17 (2) The professional solicitor and any person who, for  
18 compensation, acts as an agent, employee, independent  
19 contractor, or otherwise on behalf of the professional  
20 solicitor carries a copy of the authorization while  
21 conducting solicitations, and exhibits it on request

1           to persons solicited or police officers or agents of  
2           the department.

3           (e) No charitable organization, professional fundraising  
4           counsel, or professional solicitor subject to this chapter shall  
5           use or exploit the fact of filing any statement, report,  
6           professional fundraising counsel contracts, or professional  
7           solicitor contracts or other documents or information required  
8           to be filed under this chapter or with the department so as to  
9           lead the public to believe that the filing in any manner  
10          constitutes an endorsement or approval by the State of the  
11          purposes or goals for the solicitation by the charitable  
12          organization, professional fundraising counsel, or professional  
13          solicitor; provided that the use of the following statement  
14          shall not be deemed a prohibited exploitation: "Information  
15          regarding this organization has been filed with the State of  
16          Hawaii department of the attorney general. Filing does not  
17          imply endorsement or approval of the organization or the public  
18          solicitation for contributions."

19          (f) No person, while soliciting, shall impede or obstruct,  
20          with the intent to physically inconvenience the general public  
21          or any member thereof in any public place or in any place open  
22          to the public.

1 (g) No person shall submit for filing on behalf of any  
2 charitable organization, professional fundraising counsel, or  
3 professional solicitor, any statement, financial statement,  
4 report, attachment, or other information to be filed with the  
5 department that contains information, statements, or omissions  
6 that are false or misleading.

7 (h) No person shall solicit contributions from persons in  
8 the State or otherwise operate in the State as a charitable  
9 organization, an exempt charitable organization, professional  
10 fundraising counsel, professional solicitor, or commercial co-  
11 venturer unless the person has filed the information required by  
12 this chapter with the department in a timely manner.

13 (i) No person shall aid, abet, or otherwise permit any  
14 persons to solicit contributions from persons in the State  
15 unless the person soliciting contributions has complied with the  
16 requirements of this chapter.

17 (j) No person shall fail to file the information and  
18 registration statement, annual or financial reports, and other  
19 statements required by this chapter or fail to provide any  
20 information demanded by the attorney general pursuant to this  
21 chapter in a timely manner.

1           (k) No person shall employ in any solicitation or  
2 collection of contributions for a charitable organization, any  
3 device, scheme, or artifice to defraud or obtain money or  
4 property by means of any false, deceptive, or misleading  
5 pretense, representation, or promise.

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

10          (m) No person shall receive compensation from a charitable  
11 organization for obtaining moneys or bequests for that  
12 charitable organization if that person has also received  
13 compensation for advising the donor to make the donation;  
14 provided that compensation may be received if the person obtains  
15 the written consent of the donor to receive compensation from  
16 the charitable organization.

17          (n) No person shall act as a professional solicitor if the  
18 person, any officer, any person with a controlling interest  
19 therein, or any person the professional solicitor employs,  
20 engages, or procures to solicit for compensation, has been  
21 convicted by any federal or state court of any felony, or of any  
22 misdemeanor involving dishonesty or arising from the conduct of

1 a solicitation for a charitable organization or purpose.

2 (o) No charitable organization shall use the services of  
3 an unregistered professional solicitor or professional  
4 fundraising counsel."

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

7 "**§467B-9.7 Administrative enforcement and penalties.** (a)

8 The attorney general may refuse to register, may revoke, or may  
9 suspend the registration of any charitable organization,  
10 professional fundraising counsel, or professional solicitor  
11 whenever the attorney general finds that a charitable  
12 organization, professional fundraising counsel, or professional  
13 solicitor, or an agent, servant, or employee thereof:

14 (1) Has violated or is operating in violation of this  
15 chapter, the rules of the attorney general, or an  
16 order issued by the attorney general;

17 (2) Has refused or failed, after notice, to produce any  
18 records of the organization or to disclose any  
19 information required to be disclosed under this  
20 chapter or the rules of the attorney general;



1           (3) Has made a material false statement in an application,  
2                   statement, or report required to be filed under this  
3                   chapter; or

4           (4) Has failed to file the financial report required by  
5                   section 467B-2.5, or filed an incomplete financial  
6                   report.

7           (b) When the attorney general finds that the registration  
8 of any person may be refused, suspended, or revoked under the  
9 terms of subsection (a), the attorney general may:

10           (1) Revoke a grant of exemption from any provisions of  
11                   this chapter;

12           (2) Issue an order directing that the person cease and  
13                   desist specified fundraising activities;

14           (3) Impose an administrative fine not to exceed \$1,000 for  
15                   each act or omission that constitutes a violation of  
16                   this chapter and an additional penalty, not to exceed  
17                   \$100, for each day during which the violation  
18                   continues. Registration shall be automatically  
19                   suspended upon final affirmation of an administrative  
20                   fine until the fine is paid or until the normal  
21                   expiration date of the registration. No registration  
22                   shall be renewed until the fine is paid; or

1           (4) Place the registrant on probation for such period of  
2           time and subject to such conditions as the attorney  
3           general may determine.

4           (c) Any person aggrieved by an action of the attorney  
5           general under this section may request a hearing to review that  
6           action in accordance with chapter 91 and rules adopted by the  
7           attorney general. Any request for hearing shall be made within  
8           ten days after the attorney general has served the person with  
9           notice of the action, which notice shall be deemed effective  
10          upon mailing.

11          (d) The attorney general may apply to the circuit court  
12          for the first circuit, State of Hawaii, for relief and the court  
13          may issue a temporary injunction or a permanent injunction to  
14          restrain violations of this chapter, appoint a receiver, order  
15          restitution or an accounting, or grant such other relief as may  
16          be appropriate to ensure the due application of charitable  
17          funds. Proceedings thereon shall be brought in the name of the  
18          State."

19          SECTION 8. 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 register with the department. The  
3 registration statement shall ~~[be in the form prescribed by the~~  
4 ~~attorney general and]~~ shall contain the information ~~[as the~~  
5 ~~attorney general may require.]~~ set forth in subsection (e). The  
6 registration statement shall be accompanied by a fee in the  
7 amount of \$250, or in the amount and with any additional sums as  
8 may be prescribed by the attorney general. ~~[The statement shall~~  
9 ~~list the names and addresses of all owners, officers, and~~  
10 ~~directors of a professional fundraising counsel, and the names~~  
11 ~~and addresses of all owners, officers, and directors of a~~  
12 ~~professional solicitor.]~~ Renewal registration statements shall  
13 be filed with the department on or before July 1 of each  
14 calendar year by each professional fundraising counsel or  
15 professional solicitor and shall ~~[be effective until June 30 of~~  
16 ~~the next calendar year.]~~ The renewal statement shall ~~[be in a~~  
17 ~~form prescribed by the attorney general.]~~ contain the  
18 information set forth in subsection (e). A renewal fee of \$250,  
19 or in any amount and with any additional sums as may be  
20 prescribed by the attorney general, shall accompany the renewal  
21 statement.

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

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

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

5 (d) The attorney general may [~~adopt rules to provide:~~

6 ~~(1) The extension of filing deadlines;~~

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

8 ~~(3) The electronic filing of required registration~~

9 ~~statements, contracts, forms, and reports; and~~

10 ~~(4) The acceptance of electronic signatures.] require that~~

11 registration forms and renewal registrations, surety bonds, and

12 contracts be filed with the department electronically and may

13 require the use of electronic signatures.

14 (e) Each registration and renewal registration shall

15 contain:

16 (1) The names and addresses of all owners, officers, and

17 directors of a professional fundraising counsel, and

18 the names and addresses of all owners, officers, and

19 directors of a professional solicitor;

20 (2) A statement concerning the corporate form of the

21 registrant, whether corporation, limited liability

22 corporation, partnership, or individual;

- 1        (3) State whether the registrant has an office in Hawaii  
2            and the name and phone number of the person in charge  
3            of the office;
- 4        (4) The names and addresses of any individuals supervising  
5            any solicitation activity;
- 6        (5) A statement whether the registration has entered into  
7            a consent agreement with, or been disciplined by or  
8            subject to administrative action by, another  
9            governmental agency;
- 10       (6) A statement whether any officer, director, or any  
11           person with a controlling interest in the registrant  
12           has ever been convicted of a felony or a misdemeanor  
13           involving dishonesty in the solicitation for a  
14           charitable purpose;
- 15       (7) The date that the registrant began soliciting Hawaii  
16           residents on behalf of a charitable organization or  
17           providing professional fundraising counsel services;
- 18       (8) Whether any owners, directors, or officers are related  
19           to:
- 20           (A) Any other officers, directors, owners, or  
21           employees of the registrant;

1           (B) Any officer, director, trustee, or employee of a  
2                   charitable organization under contract with the  
3                   registrant; or

4           (C) Any vendor or supplier providing goods or  
5                   services to a charitable organization under  
6                   contract with the registrant."

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

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


16           SECTION 10. In codifying the new sections added to chapter  
17 467B, Hawaii Revised Statutes, by section 2 of this Act, the  
18 revisor of statutes shall substitute appropriate section numbers  
19 for the letters used in the designations of and references to  
20 those new sections in this Act.

21           SECTION 11. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.

1 SECTION 12. This Act shall take effect upon its approval,  
2 except the amendments made by section 2 of this Act shall take  
3 effect on January 1, 2009.

4  
5  
6

INTRODUCED BY:

  
\_\_\_\_\_  
BY REQUEST



**Report Title:**

CHARITABLE ORGANIZATIONS.

**Description:**

Requires registration with the Attorney General of most charitable organizations before they can solicit funds; adds other requirements for charitable organizations and related matters.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO THE PROTECTION OF CHARITABLE GIVING.

PURPOSE: The purpose of this bill is to amend chapter 467B, Hawaii Revised Statutes, in numerous respects, to: (1) strengthen laws protecting the public from fraudulent or misleading charitable solicitation and appeals; (2) provide greater information to the public and state regulators through the re-enactment of a charitable registration law; (3) improve existing legal requirements applicable to professional solicitors and professional fundraising counsel; and (4) fund additional personnel positions relating to charitable oversight.

MEANS: Add four new sections to chapter 467B, Hawaii Revised Statutes, and amend sections 467B-1, 467B-2.5(a), 467B-5.5(b), 467B-9, 467B-9.7, and 467B-12, Hawaii Revised Statutes.

JUSTIFICATION: Hawaii has nearly 5,000 tax exempt charitable organizations that administer \$16 billion in charitable assets without any systematic oversight program by the State. In a series of articles running in the Honolulu Advertiser in September, Hawaii was described as having the most lax charitable oversight laws in the Nation. It quoted the head of one national charity rating service, Charity Navigator, as saying "there is not another state with less of a commitment to protecting donors." This bill will re-enact a charitable registration requirement that existed in Hawaii from 1969 to 1994 and provide for limited exemptions from the registration requirement. Re-codifying a registration requirement will protect the public from sham charities. Registration will allow donors to contact the Attorney General and obtain some basic information about the nonprofit and its fundraiser--who they are, where they are, how much money they took in last year, and how much of the funds made it into the coffers of the nonprofit for which they were soliciting. Second, registration forms and financial reports provide a wealth of information to enforcers.

It is usually through registration that regulators can find out who are the persons likely making a solicitation, where they are making it from, who the principals are, what other organizations they are involved with, roughly what they do with the money they raise, and whether they are conscientious about registering and supplying the required information. Investigators use all of this information to get to the bottom of a suspicious matter. To minimize burdens on the nonprofit sector, the Attorney General proposes to use a three-page Universal Registration statement used in thirty-five states. This bill proposes to require audited financial statements for nonprofits having over \$500,000 in annual income--a requirement that will affect only about twenty percent of Hawaii nonprofits and a practice recommended by many state nonprofit associations. Most states have lower audit thresholds.

In addition, the bill establishes registration fees based upon the charities' income and size of the charities' fund balance to fund state oversight and additional personnel positions that will be required to review registration statements. The bill also will repeal an existing bonding requirement for charitable fundraising counsel that has been found by at least one court to violate the First Amendment. It will also make other clarifying amendments to Hawaii's charitable solicitation law by requiring solicitors to report both national and Hawaii donations and receipts in their financial reports to the Attorney General. The bill also provides the Attorney General the authority to issue subpoenas to investigate possible violations of the law and to seek injunctive relief from the Circuit Court to prevent and restrain violations.

The re-codification of Hawaii's charity registration law will become more vitally important if the IRS raises the 990 form filing threshold from its current \$100,000 in income to \$1 million, as the IRS is expected to do for the 2009 tax year. If the filing threshold is raised by the IRS to \$1 million, basic financial and operating data concerning

over 90 percent of Hawaii charities that is contained in the 990 form will no longer be readily available to the public. Restoration of Hawaii's charity registration law would help plug this "gap" in financial and operating data concerning charities soliciting funds in Hawaii.

Impact on the public: This bill will provide substantially improved consumer protection for the public and greater access to information about charities soliciting funds in Hawaii so that the public can make more informed decisions. The bill will also promote philanthropy in Hawaii by making it safer for charitable giving.

Impact on the department and other agencies: The Department will need additional personnel positions to process registration forms and financial reports, to investigate possible violations, and to bring enforcement actions for the protection of the public. The bill proposes to authorize these new positions to be compensated from registration fees paid into the Solicitation of Funds for Charitable Purposes Special Fund.

GENERAL FUND: None.

OTHER FUNDS: \$ from the Solicitation of Funds for Charitable Purposes Special Fund.

PPBS PROGRAM DESIGNATION: ATG 100

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.