

JAN 23 2008

A BILL FOR AN ACT

RELATING TO CHARITABLE TRUSTS AND NONPROFIT ORGANIZATIONS.

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

1 SECTION 1. Hawaii has more than five thousand charities
2 and nonprofit organizations that employ forty-one thousand
3 individuals who provide needed services to Hawaii residents.
4 Hawaii charities have revenues over \$2,000,000,000 and pay over
5 \$1,000,000,000 in wages. According to a study conducted in
6 2002, local residents made \$430,000,000 worth of cash and in-
7 kind donations in one year to Hawaii and national charities.

8 However, Hawaii is one of only eleven states that do not
9 require charities to register with a state agency. Nonprofit
10 experts have noted that Hawaii's oversight of charities is one
11 of the weakest in the nation. According to a 2004 survey,
12 Hawaii was ranked last in the number of state positions budgeted
13 for charity oversight and enforcement. New York had fifty-five
14 budgeted positions, Pennsylvania had thirty positions, and
15 Oregon had nearly twenty positions. Hawaii has a single deputy
16 attorney general who serves on a part-time basis to oversee
17 charities in the State.



1 Due to the absence of a registration system, the department
2 of the attorney general may only pursue an investigation if an
3 individual complains or questionable conduct is revealed and
4 disclosed to the public. Recent news articles reported a pre-
5 school with an enrollment of three hundred students had
6 \$2,000,000 in annual revenues, paid a top executive \$250,000
7 annually, made an illegal \$100,000 loan to another officer whose
8 spouse is another executive, and paid \$1,200 per month for two
9 leased luxury cars for its husband and wife management team.
10 New reports have revealed other instances of improper and
11 illegal conduct by charities and leaders.

12 The legislature finds that a registration system is needed
13 for charities. A registration system will provide the State
14 with valuable information on which nonprofit groups are raising
15 funds, what programs these groups seek to fund, and how these
16 groups are spending collected funds. Registration can help
17 enforcement officials spot red flags, such as questionable
18 transactions or compensation deals, and answer questions from
19 the public. The review of annual filings may also serve as
20 deterrents to abuse. Before making a contribution, donors could
21 find out if an organization is a legitimate charity and



1 determine if the group has provided the State with information
2 on its finances.

3 The purpose of this Act is to:

4 (1) Require charitable trusts and nonprofits to register
5 and file annual financial reports with the attorney
6 general;

7 (2) Provides standards for registration and registration
8 of charitable trusts and nonprofits;

9 (3) Authorizes the attorney general to conduct
10 investigations on possible violations;

11 (4) Prohibits contracting with unregistered solicitors;

12 (5) Requires a report submittal fee based on total revenue
13 of organization; and

14 (6) Appropriates funds to staff additional positions.

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

18 "§467B-A Registration of charitable organizations. (a)
19 Every public benefit corporation domiciled in Hawaii and every
20 charitable organization not exempted by section 467B-C shall
21 register with the department prior to conducting any
22 solicitation or prior to having any solicitation conducted on



1 its behalf by others. Two authorized officers of the charitable
2 organization shall sign the registration form and shall certify
3 that the statements therein are true and correct to the best of
4 their knowledge subject to penalties imposed by section 710-
5 1063. A chapter, branch, or affiliate in this State of a
6 registered parent organization shall not be required to register
7 if the principal office of the parent organization is located in
8 this State and if the parent organization files a consolidated
9 annual report for itself and its chapter, branch, or affiliate.

10 (b) The attorney general may make available a registration
11 form to assist in the registration by charitable organizations
12 that must register in other states and may designate the uniform
13 registration statement developed by the National Association of
14 State Charity Officials be used as the registration form under
15 this section.

16 (c) The attorney general may require that registration
17 forms be filed with the department electronically and may
18 require the use of electronic signatures.

19 **§467B-B Annual financial reports; fiscal records and fees.**

20 (a) Every charitable organization required to register pursuant
21 to section 467B-A shall annually file with the department a
22 report for its most recently completed fiscal year, which report



1 shall include a financial statement and other information as the
2 department may require. The charitable organization shall file
3 the report not more than four months following the close of its
4 fiscal year, which report shall be accompanied by a fee as
5 prescribed by subsection (d) and shall be signed by two
6 authorized officers of the organization, one of whom shall be
7 the chief fiscal officer of the organization. These officers
8 shall certify that the report is true and correct to the best of
9 their knowledge. The department shall prescribe the form of the
10 report and may prescribe standards for its completion. The
11 department may accept, under such conditions as the attorney
12 general may prescribe, a copy or duplicate original of financial
13 statements, reports, or returns filed by the charitable
14 organization with the Internal Revenue Service or another state
15 having requirements similar to the provisions of this section.

16 (b) A charitable organization with gross revenue in excess
17 of \$1,000,000 in the year covered by the report shall include
18 with its financial statement an audit report prepared by a
19 certified public accountant. For purposes of this section,
20 gross revenue shall not include grants or fees from government
21 agencies or the revenue derived from funds held in trust for the
22 benefit of the organization.



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

4 (d) Each charitable organization filing a report required
5 by this section shall pay to the department with the report, a
6 fee based on the total amount of its income and receipts during
7 the time covered by the report at the close of the calendar or
8 fiscal year adopted by the charitable organization as follows:

9 (1) \$10, if less than \$25,000;

10 (2) \$25, if \$25,000 or more but less than \$50,000;

11 (3) \$50, if \$50,000 or more but less than \$100,000;

12 (4) \$100, if \$100,000 or more but less than \$250,000;

13 (5) \$150, if \$250,000 or more but less than \$500,000;

14 (6) \$200, if \$500,000 or more but less than \$1,000,000;

15 (7) \$300, if \$1,000,000 or more but less than \$2,000,000;

16 (8) \$500, if \$2,000,000 but less than \$5,000,000; or

17 (9) \$750, if \$5,000,000 or more.

18 (e) In the case of each failure to file a return or report
19 required under this section (determined with regard to any
20 extension of time for filing), unless it is shown that the
21 failure is due to reasonable cause, there shall be paid by the
22 person failing to so file, \$20 for each day during which the



1 failure continued, but the total amount imposed under this
2 subsection on any person for failure to file any return or
3 report shall not exceed \$20,000. Returns and reports submitted
4 without the proper fee shall not be accepted for filing.

5 (f) Every charitable organization required to file an
6 annual report and every charitable organization subject to
7 sections 467B-A and 467B-B shall keep true fiscal records that
8 shall be available to the department for inspection upon
9 request. Such organization shall retain such records for no
10 less than three years after the end of the fiscal year to which
11 they relate.

12 §467B-C Charitable organizations exempted from
13 registration and financial disclosure requirements. The
14 following charitable organizations shall not be subject to
15 sections 467B-A and 467B-B, if each organization submits
16 information as the department may require to substantiate an
17 exemption under this section:

18 (1) Any duly organized religious corporation, institution,
19 or society;

20 (2) Any parent-teacher association or educational
21 institution, the curricula of which in whole or in
22 part are registered or approved by any state or the



- 1 United States either directly or by acceptance of
2 accreditation by an accrediting body;
- 3 (3) Any nonprofit hospital licensed by the State or any
4 similar provision of the laws of any other state;
- 5 (4) Any governmental unit or instrumentality of any state
6 or the United States;
- 7 (5) Any person who solicits solely for the benefit of
8 organizations described in paragraphs (1) to (4); and
- 9 (6) Any charitable organization that normally receives
10 less than \$25,000 in contributions annually, if the
11 organization does not compensate any person primarily
12 to conduct solicitations.

13 §467B-D Investigations; subpoenas; court orders. (a) The
14 department, on its own motion or on complaint of any person, may
15 conduct an investigation to determine whether any person has
16 violated or is about to violate any provision of sections 467B-
17 A, 467B-B, and 467B-9.

18 (b) The attorney general or the attorney general's
19 authorized representative may subpoena documentary material
20 relating to any matter under investigation, issue subpoenas to
21 any person involved in or who may have knowledge of any matter



1 under investigation, administer an oath or affirmation to any
2 person and conduct hearings on any matter under investigation.

3 (c) If any person fails to obey any subpoena issued by the
4 department pursuant to this section, the department may, after
5 notice, apply to the circuit court for the first circuit, State
6 of Hawaii, for, and after a hearing on the application the court
7 may issue, an order requiring such person to obey such subpoena
8 or any part thereof, together with such other relief as may be
9 appropriate. Any disobedience of any order entered under this
10 section by any court shall be punished as a contempt thereof."

11 SECTION 3. Section 467B, Hawaii Revised Statutes, is
12 amended by adding two new definitions to be appropriately
13 inserted and to read as follows:

14 "Person" means an individual, corporation, limited
15 liability company, association, partnership, trust, foundation,
16 and any other entity, however styled.

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

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



1 "(a) Within ninety days after a solicitation campaign or
2 event has been completed and on the anniversary of the
3 commencement of a solicitation campaign lasting more than one
4 year, a professional solicitor shall file with the attorney
5 general a financial report for the campaign, including gross
6 revenue and an itemization of all expenses incurred[-] on a form
7 prescribed by the attorney general. This report shall be signed
8 under penalty provided by section 710-1063 by the authorized
9 contracting agent for the professional solicitor and two
10 authorized officials of the charitable organization[-] and shall
11 report gross revenue from Hawaii donors and national gross
12 revenue from an solicitation activity or campaign. A
13 professional solicitor shall maintain during each solicitation
14 campaign and for not less than three years after the completion
15 of that campaign the following records, which shall be available
16 for inspection upon demand by the attorney general:

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

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

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



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

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

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

- 19 (1) The goods or services to be offered to the public;
20 (2) The geographic area where, and the starting and final
21 date when, the offering is to be made;



1 (3) The manner in which the name of the charitable
2 organization is to be used, including any
3 representation to be made to the public as to the
4 amount or per cent per unit of goods or services
5 purchased or used that is to benefit the charitable
6 organization;

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

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

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

15 "**§467B-9 Prohibited acts.** (a) No person, for the purpose
16 of soliciting contributions from persons in the State, shall use
17 the name of any other person except that of an officer,
18 director, or trustee of the charitable organization by or for
19 which contributions are solicited, without the written consent
20 of the other persons.

21 A person shall be deemed to have used the name of another
22 person for the purpose of soliciting contributions if the latter



1 person's name is listed on any stationery, advertisement,
2 brochure, or correspondence in or by which a contribution is
3 solicited by or on behalf of a charitable organization or the
4 latter person's name is listed or referred to in connection with
5 a request for a contribution as one who has contributed to,
6 sponsored, or endorsed the charitable organization or its
7 activities.

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

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

20 (d) No professional solicitor, and no agent, employee,
21 independent contractor, or other person acting on behalf of the



1 professional solicitor, shall solicit in the name of or on
2 behalf of any charitable organization unless:

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

12 (2) The professional solicitor and any person who, for
13 compensation, acts as an agent, employee, independent
14 contractor, or otherwise on behalf of the professional
15 solicitor carries a copy of the authorization while
16 conducting solicitations, and exhibits it on request
17 to persons solicited or police officers or agents of
18 the department.

19 (e) No charitable organization, professional fundraising
20 counsel, or professional solicitor subject to this chapter shall
21 use or exploit the fact of filing any statement, report,
22 professional fundraising counsel contracts, or professional



1 solicitor contracts or other documents or information required
2 to be filed under this chapter or with the department so as to
3 lead the public to believe that the filing in any manner
4 constitutes an endorsement or approval by the State of the
5 purposes or goals for the solicitation by the charitable
6 organization, professional fundraising counsel, or professional
7 solicitor; provided that the use of the following statement
8 shall not be deemed a prohibited exploitation: "Information
9 regarding this organization has been filed with the State of
10 Hawaii department of the attorney general. Filing does not
11 imply endorsement or approval of the organization or the public
12 solicitation for contributions."

13 (f) No person, while soliciting, shall impede or obstruct,
14 with the intent to physically inconvenience the general public
15 or any member thereof in any public place or in any place open
16 to the public.

17 (g) No person shall submit for filing on behalf of any
18 charitable organization, professional fundraising counsel, or
19 professional solicitor, any statement, financial statement,
20 report, attachment, or other information to be filed with the
21 department that contains information, statements, or omissions
22 that are false or misleading.



1 (h) No person shall solicit contributions from persons in
2 the State or otherwise operate in the State as a charitable
3 organization, an exempt charitable organization, professional
4 fundraising counsel, professional solicitor, or commercial co-
5 venturer unless the person has filed the information required by
6 this chapter with the department in a timely manner.

7 (i) No person shall aid, abet, or otherwise permit any
8 persons to solicit contributions from persons in the State
9 unless the person soliciting contributions has complied with the
10 requirements of this chapter.

11 (j) No person shall fail to file the information and
12 registration statement, annual or financial reports, and other
13 statements required by this chapter or fail to provide any
14 information demanded by the attorney general pursuant to this
15 chapter in a timely manner.

16 (k) No person shall employ in any solicitation or
17 collection of contributions for a charitable organization, any
18 device, scheme, or artifice to defraud or obtain money or
19 property by means of any false, deceptive, or misleading
20 pretense, representation, or promise.

21 (l) No person, in the course of any solicitation, shall
22 represent that funds collected will be used for a particular



1 charitable purpose, or particular charitable purposes, if the
2 funds solicited are not used for the represented purposes.

3 (m) No person shall receive compensation from a charitable
4 organization for obtaining moneys or bequests for that
5 charitable organization if that person has also received
6 compensation for advising the donor to make the donation;
7 provided that compensation may be received if the person obtains
8 the written consent of the donor to receive compensation from
9 the charitable organization.

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

17 (o) No charitable organization shall use the service of an
18 unregistered professional solicitor or professional fundraising
19 counsel."

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



1 "§467B-9.7 Administrative enforcement and penalties. (a)

2 The attorney general may refuse to register, may revoke, or may
3 suspend the registration of any charitable organization,
4 professional fundraising counsel, or professional solicitor
5 whenever the attorney general finds that a charitable
6 organization, professional fundraising counsel, or professional
7 solicitor, or an agent, servant, or employee thereof:

8 (1) Has violated or is operating in violation of this
9 chapter, the rules of the attorney general, or an
10 order issued by the attorney general;

11 (2) Has refused or failed, after notice, to produce any
12 records of the organization or to disclose any
13 information required to be disclosed under this
14 chapter or the rules of the attorney general;

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

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



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

4 (1) Revoke a grant of exemption from any provisions of
5 this chapter;

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

8 (3) Impose an administrative fine not to exceed \$1,000 for
9 each act or omission that constitutes a violation of
10 this chapter and an additional penalty, not to exceed
11 \$100, for each day during which the violation
12 continues. Registration shall be automatically
13 suspended upon final affirmation of an administrative
14 fine until the fine is paid or until the normal
15 expiration date of the registration. No registration
16 shall be renewed until the fine is paid; or

17 (4) Place the registrant on probation for such period of
18 time and subject to such conditions as the attorney
19 general may determine.

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



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

5 (d) The attorney general may apply to the circuit court
6 for the first circuit, State of Hawaii, for relief and the court
7 may issue a temporary injunction or a permanent injunction to
8 restrain violations of this chapter, appoint a receiver, order
9 restitution or an accounting, or grant other relief as may be
10 appropriate to ensure the due application of charitable funds.
11 Proceedings thereon shall be brought in the name of the State."

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

14 **"§467B-12 Filing requirements for professional fundraising**
15 **counsel and professional solicitors.** (a) Every professional
16 fundraising counsel or professional solicitor, prior to any
17 solicitation, shall register with the department. The
18 registration statement [~~shall be in the form prescribed by the~~
19 ~~attorney general and~~] shall contain the information [~~as the~~
20 ~~attorney general may require.~~] set forth in subsection (e). The
21 registration statement shall be accompanied by a fee in the
22 amount of \$250, or in the amount and with any additional sums as



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

15 (b) [~~The professional fundraising counsel or~~] Each
16 professional solicitor, at the time of each filing, shall file
17 with and have approved by the attorney general a bond in which
18 the applicant is the principal obligor in the penal sum of
19 \$25,000 issued with good and sufficient surety or sureties
20 approved by the attorney general and which shall remain in
21 effect for one year. The bond shall inure to the benefit of the
22 State, conditioned that the applicant, its officers, directors,



1 employees, agents, servants, and independent contractors shall
2 not violate this chapter. A partnership or corporation that is
3 a ~~[professional fundraising counselor or]~~ professional solicitor
4 may file a consolidated bond on behalf of all its members,
5 officers, and employees.

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

19 (d) The attorney general may ~~[adopt rules to provide for:~~
20 ~~(1) The extension of filing deadlines;~~
21 ~~(2) The online availability of forms required to be filed;~~



1 ~~(3) The electronic filing of required registration~~
2 ~~statements, contracts, forms, and reports; and~~
3 ~~(4) The acceptance of electronic signatures.]~~
4 require that registration and renewal registration, surety
5 bonds, and contracts be filed with the department electronically
6 and may required the use of electronic signatures.

7 (e) Each registration and renewal registration shall
8 contain:

9 (1) The names and addresses of all owners, officers, and
10 directors of a professional fundraising counsel, and
11 the names and addresses of all owners, officers, and
12 directors of a professional solicitor;

13 (2) A statement concerning the corporate form of the
14 registrant, whether corporation, limited liability
15 corporation, partnership, or individual;

16 (3) State whether the registrant has an office in Hawaii
17 and the name and phone number of the person in charge
18 of the office;

19 (4) The names and addresses of any individuals supervising
20 any solicitation activity;

21 (5) A statement whether the registration has entered into
22 a consent agreement with, or been disciplined by or



- 1 subject to administrative action by, another
- 2 governmental agency;
- 3 (6) A statement whether any officer, director, or any
- 4 person with a controlling interest in the registrant
- 5 has ever been convicted of a felony or a misdemeanor
- 6 involving dishonesty in the solicitation for a
- 7 charitable purpose;
- 8 (7) The date that the registrant began soliciting Hawaii
- 9 residents on behalf of a charitable organization or
- 10 providing professional fundraising counsel services;
- 11 (8) Whether any owners, directors, or officers are related
- 12 to:
- 13 (A) Any other officers, directors, owners, or
- 14 employees of the registrant;
- 15 (B) Any officer, director, trustee, or employee of a
- 16 charitable organization under contract with the
- 17 registrant; or
- 18 (C) Any vendor or supplier providing goods or
- 19 services to a charitable organization under
- 20 contract with the registrant."

21 SECTION 9. There is appropriated out of the solicitation
22 of funds for charitable purposes special fund the sum of



S.B. NO. 3171

And please

And of

Clara K. Fisher

Will Sp

S.S.T.L.

For many

Jay L. Han

Randy M. Baker

James G. Monroe

Jill

Ron

Elizabeth M. O'Connell

D.S.O. J.



Report Title:

Charitable Trusts and Nonprofit Organizations; Accountability; Appropriation

Description:

Requires charitable trusts and nonprofits to register and file annual financial reports with the attorney general; authorizes the attorney general to conduct investigations on possible violations; prohibits contracting with unregistered solicitors; requires a report submittal fee based on total revenue of organization; appropriates funds to staff additional positions.

