

SB. NO. 1020

JAN 24 2013

A BILL FOR AN ACT

RELATING TO CHARITABLE SOLICITATION.

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

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

3 "**§467B-3 Reciprocal agreements.** The attorney general may
4 enter into a reciprocal agreement with the appropriate authority
5 of another state for the purpose of exchanging information with
6 respect to charitable organizations, professional fundraising
7 counsel, [~~and~~] professional solicitors[-], and commercial co-
8 venturers."

9 SECTION 2. Section 467B-5, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) Every charitable organization, professional
12 fundraising counsel, [~~and~~] professional solicitor, and
13 commercial co-venturer subject to this chapter shall keep true
14 and accurate records as to its activities in a form that will
15 accurately provide support for the information required by this
16 chapter. Upon demand, the records shall be made available to
17 the attorney general for inspection. Except as provided in

1 subsection (b), records shall be retained for a period of not
2 less than [~~five~~] three years."

3 SECTION 3. Section 467B-5.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§467B-5.5 **Commercial co-venturer's charitable sales**

6 **promotions.** (a) All charitable sales promotions by a
7 commercial co-venturer shall disclose the name of the commercial
8 co-venturer.

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

21 (1) The goods or services to be offered to the public;

22 (2) The geographic area where, and the starting and final
23 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 (c) A final accounting for each charitable sales promotion
14 shall be prepared by the commercial co-venturer following the
15 completion of the promotion. A copy of the final accounting
16 shall be provided to the attorney general not more than twenty
17 days after the copy is requested by the attorney general. A
18 copy of the final accounting shall be provided to the charitable
19 organization not more than twenty days after the copy is
20 requested by the charitable organization. The final accounting
21 shall be kept by the commercial co-venturer for a period of
22 three years, unless the commercial co-venturer and the
23 charitable organization mutually agree that the accounting

1 should be kept by the charitable organization instead of the
2 commercial co-venturer.

3 (d) A fine of \$20 shall be imposed on a commercial co-
4 venturer who fails to file a written consent as required by
5 subsection (b), unless it is shown that the failure is due to
6 reasonable cause, for each day during which the violation
7 continues; provided that the total amount imposed under this
8 subsection shall not exceed \$1,000."

9 SECTION 4. Section 467B-6.5, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) Every charitable organization required to register
12 pursuant to section 467B-2.1 shall annually file with the
13 department a report for its most recently completed fiscal year.
14 If the charitable organization files a Form 990 or 990-EZ with
15 the Internal Revenue Service, the annual report shall be a copy
16 of that Form 990 or 990-EZ. If the registered charitable
17 organization is required to file a Form 990-T with the Internal
18 Revenue Service, the annual report shall include a copy of that
19 Form 990-T. If a charitable organization is not required to
20 file a Form 990 or 990-EZ with the Internal Revenue Service, the
21 annual report shall contain all information prescribed by the
22 department. The charitable organization shall file its annual

1 report not later than the fifteenth day of the fifth month
2 following the close of its fiscal year. A charitable
3 organization that has obtained an extension of time to file a
4 Form 990 or 990-EZ from the Internal Revenue Service may obtain
5 an extension of time to file the annual report with the
6 department, by filing with the department a copy of the Internal
7 Revenue Service's approved extension of time to file. The
8 annual report shall be accompanied by a filing fee as prescribed
9 by subsection (d). The department shall accept, under
10 conditions prescribed by the attorney general, a copy or
11 duplicate original of financial statements, reports, or returns
12 filed by the charitable organization with the Internal Revenue
13 Service or another state having requirements similar to the
14 provisions of this section; provided that the attorney general
15 may prescribe the form of the annual financial report for
16 charitable organizations that file the Form 990-N with the
17 Internal Revenue Service, or who are not required to file a Form
18 990 or 990-EZ with the Internal Revenue Service."

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

21 **"§467B-8 Information filed to become public records.**
22 Statements, reports, professional fundraising counsel contracts
23 or professional solicitor contracts, commercial co-venturer

1 consents, and all other documents and information required to be
2 filed under this chapter or by the attorney general shall become
3 government records in the department and be open to the general
4 public for inspection pursuant to chapter 92F; provided that
5 information in any registration statement concerning the
6 residential addresses of any officer or director or that
7 identifies a charitable organization's financial or banking
8 accounts shall be confidential under chapter 92F."

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

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

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

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

3 (b) No charitable organization, professional solicitor,
4 [~~or~~] professional fundraising counsel, or commercial co-venturer
5 soliciting contributions shall use a name, symbol, or statement
6 so closely related or similar to that used by another charitable
7 organization or governmental agency that the use thereof would
8 tend to confuse or mislead the 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
23 charitable organization and shall expressly state on

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

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

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

1 statement shall not be deemed a prohibited exploitation:

2 "Information regarding this organization has been filed with the
3 State of Hawaii department of the attorney general. Filing does
4 not imply endorsement or approval of the organization or the
5 public solicitation for contributions."

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

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

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

22 (i) No person shall aid, abet, or otherwise permit any
23 persons to solicit contributions from persons in the State

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1 unless the person soliciting contributions has complied with the
2 requirements of this chapter.

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

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

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

17 (m) No person shall receive compensation from a charitable
18 organization for obtaining moneys or bequests for that
19 charitable organization if that person has also received
20 compensation for advising the donor to make the donation;
21 provided that compensation may be received if the person obtains
22 the written consent of the donor to receive compensation from
23 the charitable organization.

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

8 (o) No charitable organization shall use the services of
9 an unregistered professional solicitor or professional
10 fundraising counsel."

11 SECTION 7. Section 467B-9.5, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§467B-9.5 Financial statements.** Whenever the attorney
14 general has reasonable grounds to believe that any charitable
15 organization, professional fundraising counsel, [øø]
16 professional solicitor, or commercial co-venturer has engaged in
17 any act or practice constituting a violation of this chapter or
18 any rule or order adopted or issued, the attorney general may
19 require the charitable organization, professional fundraising
20 counsel, [øø] professional solicitor, or commercial co-venturer
21 to submit to the department an audited financial statement
22 prepared in accordance with generally accepted accounting

1 principles by an independent certified public accountant, or as
2 otherwise required by the attorney general."

3 SECTION 8. Section 467B-9.6, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§467B-9.6 **Enforcement.** (a) If any charitable
6 organization, professional fundraising counsel, [~~or~~]
7 professional solicitor, or commercial co-venturer fails to file
8 any statement, report, written consent, or other information
9 required to be filed under this chapter, the attorney general
10 may demand that the charitable organization, the professional
11 fundraising counsel, [~~or the~~] professional solicitor, or
12 commercial co-venturer provide the statement, report, written
13 consent, or other information not more than twenty days after
14 demanded by the attorney general. This demand may be mailed to
15 the address on file with the department.

16 (b) Whenever the attorney general has reason to believe
17 that any charitable organization, professional fundraising
18 counsel, professional solicitor, commercial co-venturer, or
19 other person is operating in violation of this chapter, the
20 attorney general may investigate and bring an action in any
21 court of this State to enjoin the charitable organization,
22 professional fundraising counsel, professional solicitor,
23 commercial co-venturer, or other person from continuing the

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1 violation or doing any acts in furtherance thereof, and for any
2 other relief that the court deems appropriate."

3 SECTION 9. Section 467B-11.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§467B-11.5 Charitable organizations exempted from
6 registration and financial disclosure requirements. The
7 following charitable organizations shall not be subject to
8 sections 467B-2.1 and 467B-6.5, if the organization submits
9 information as the department may require to substantiate an
10 exemption under this section:

11 (1) Any duly organized religious corporation, institution,
12 or society that is exempt from filing Form 990 with
13 the Internal Revenue Service pursuant to sections
14 6033(a)(3)(A)(i) and (iii) and 6033(a)(3)(C)(i) of the
15 Internal Revenue Code, as amended;

16 (2) Parent-teacher associations;

17 (3) Any educational institution that is licensed or
18 accredited by any of the following licensing or
19 accrediting organizations:

20 (A) Hawaii Association of Independent Schools;

21 (B) Hawaii Council of Private Schools;

22 (C) Western Association of Schools and Colleges;

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- 1 (D) Middle States Association of Colleges and
2 Schools;
- 3 (E) New England Association of Schools and Colleges;
- 4 (F) North Central Association of Colleges and
5 Schools;
- 6 (G) Northwest [~~Association of Schools and Colleges;~~
7 Commission on Colleges and Universities;
- 8 (H) Southern Association of Colleges and Schools; or
- 9 (I) The National Association for the Education of
10 Young Children;
- 11 and any organization exempt from taxation under
12 section 501(c)(3) of the Internal Revenue Code
13 expressly authorized by, and having an established
14 identity with, such an educational institution;
15 provided that the organization's solicitation of
16 contributions is primarily directed to the students,
17 alumni, faculty, and trustees of the institutions and
18 their respective families;
- 19 (4) Any nonprofit hospital licensed by the State or any
20 similar provision of the laws of any other state;
- 21 (5) Any corporation established by an act of the United
22 States Congress that is required by federal law to
23 submit to Congress annual reports, fully audited by

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1 the United States Department of Defense, of its
2 activities including itemized accounts of all receipts
3 and expenditures;

4 (6) Any agency of this State, another state, or the
5 federal government; and

6 (7) Any charitable organization that normally receives less
7 than \$25,000 in contributions annually, if the
8 organization does not employ or compensate a
9 professional solicitor or professional fundraising
10 counsel. For purposes of this paragraph, an
11 organization normally does not receive more than
12 \$25,000 in contributions annually, if during the
13 immediately preceding fiscal years, it received, on
14 average, less than \$25,000 in contributions."


15 SECTION 10. Statutory material to repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 11. This Act shall take effect upon its approval

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INTRODUCED BY: 

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BY REQUEST

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Report Title:

Charitable Solicitation of Funds from the Public

Description:

Extends reporting requirements to commercial co-venturers, allows for penalties to be imposed on commercial co-venturers who fail to comply with the reporting requirements, and clarifies the exemption from registration for organizations who receive less than \$25,000 in contributions annually.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CHARITABLE SOLICITATION.

PURPOSE: The purposes of this bill are to (1) amend chapter 467B, Hawaii Revised Statutes, to extend existing provisions of the chapter that apply to registered charities and professional fundraisers to commercial co-venturers, who are also regulated by the chapter; and (2) clarify an exemption from registration requirements applicable to small charities.

MEANS: Amend sections 467B-3, 467B-5(a), 467B-5.5, 467B-6.5(a), 467B-8, 467B-9, 467B-9.5, 467B-9.6, and 467B-11.5, Hawaii Revised Statutes.

JUSTIFICATION: Chapter 467B, Hawaii Revised Statutes, regulates commercial co-venturers who conduct cause related marketing that benefit charitable organizations. Existing reporting requirements, record keeping and remedial provisions presently do not apply to commercial co-venturers. Imposing these reporting and record keeping requirements on commercial co-ventures assures that the charitable organizations that benefit from these commercial sales promotions have consented to the promotion and that the organization and the Attorney General have access to information relating to the marketing event. This bill extends these provisions to commercial co-venturers. The bill also clarifies the exemption for charities that normally receive less than \$25,000 annually by adding language that provides for "averaging" the organization's contributions over the prior three years for purposes of applying the exemption, which will benefit small charities that unexpectedly receive an unexpected, large contribution. The bill also makes stylistic, technical amendments to the chapter.

Impact on the public: This bill will allow directors of nonprofit corporations to have a statutorily guaranteed right of access when

reasonably related to their duties as a director.

Impact on the department and other agencies:
None.

GENERAL FUND: None.
OTHER FUNDS: None.
PPBS PROGRAM DESIGNATION: ATG 100
OTHER AFFECTED AGENCIES: None.
EFFECTIVE DATE: Upon approval.