

Proposed **S B. NO.1020, S.D. 1**  
**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-1, Hawaii Revised Statutes, is  
2 amended by amending the definition of "Professional solicitor"  
3 to read as follows:

4 "Professional solicitor" means any person who, for a  
5 financial or other consideration, solicits contributions in this  
6 State for a charitable organization, or any person with whom the  
7 professional solicitor independently contracts to solicit for  
8 contributions. A person who is otherwise a professional  
9 fundraising counsel shall be deemed a professional solicitor if  
10 the person's compensation is related to the amount of  
11 contributions received[+] or has custody or control of  
12 contributions received. The term does not include a bona fide  
13 volunteer. The term includes a salaried officer or employee of  
14 a charitable organization if the salaried officer or employee of  
15 the charitable organization receives percentage compensation.  
16 The term does not include an attorney, investment counselor or  
17 advisor, financial advisor, or banker, or other person who:

# Proposed S.B. NO.1020 S.D.1

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

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

5           SECTION 2. Section 467B-2.1, Hawaii Revised Statutes, is  
6 amended to read as follows:

7           "**§467B-2.1 Registration of charitable organizations.** (a)  
8 Every public benefit corporation domiciled in Hawaii and every  
9 charitable organization not exempted by section 467B-11.5 shall  
10 register with the department prior to conducting any  
11 solicitation or prior to having any solicitation conducted on  
12 its behalf by others. Two authorized officers of the charitable  
13 organization shall sign the registration form and shall certify  
14 that the statements therein are true and correct to the best of  
15 their knowledge subject to penalties imposed by section 710-  
16 1063. A consolidated application for registration may, at the  
17 option of the charitable organization, be submitted by a parent  
18 organization for itself and any or all of its related  
19 foundations, supporting organizations, chapters, branches, or  
20 affiliates in this State.

21           (b) The attorney general may make available a registration  
22 form to assist in the registration by charitable organizations  
23 ~~[that must register in other states and shall designate the~~

# Proposed S.B. NO.1020 S.D.1

1 ~~uniform registration statement developed by the National~~  
2 ~~Association of State Charity Officials be used as the~~  
3 ~~registration form under this section.].~~

4 (c) The attorney general may require that registration  
5 forms be filed with the department electronically and may  
6 require the use of electronic signatures."

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

9 "**§467B-3 Reciprocal agreements.** The attorney general may  
10 enter into a reciprocal agreement with the appropriate authority  
11 of another state for the purpose of exchanging information with  
12 respect to charitable organizations, professional fundraising  
13 counsel, ~~[and]~~ professional solicitors~~[-]~~, and commercial co-  
14 venturers."

15 SECTION 4. Section 467B-5, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

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

# Proposed S.B. NO.1020 S.D.1

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

3 SECTION 5. 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;

# Proposed S.B. NO.1020 S.D.1

- 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

# Proposed S.B. NO.1020 S.D.1

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 6. 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

# Proposed S.B. NO.1020 S.D.1

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 7. 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

# Proposed S.B. NO.1020 S.D.1

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 and audited financial statements submitted by  
9 registered charities shall be confidential under chapter 92F."

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

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

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



## Proposed S.B. NO.1020 S.D.1

1 a request for a contribution as one who has contributed to,  
2 sponsored, or endorsed the charitable organization or its  
3 activities.

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

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

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

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

## Proposed S.B. NO.1020 S.D.1

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, or commercial co-venturer  
15 subject to this chapter shall use or exploit the fact of filing  
16 any statement, report, professional fundraising counsel  
17 contracts, written consents, or professional solicitor contracts  
18 or other documents or information required to be filed under  
19 this chapter or with the department so as to lead the public to  
20 believe that the filing in any manner constitutes an endorsement  
21 or approval by the State of the purposes or goals for the  
22 solicitation by the charitable organization, professional  
23 fundraising counsel, [~~or~~] professional solicitor[+], or

# Proposed S.B. NO.1020 S.D.1

1 commercial co-venturer; provided that the use of the following  
2 statement shall not be deemed a prohibited exploitation:  
3 "Information regarding this organization has been filed with the  
4 State of Hawaii department of the attorney general. Filing does  
5 not imply endorsement or approval of the organization or the  
6 public 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, or commercial co-venturer any statement,  
14 financial statement, report, attachment, or other information to  
15 be filed with the department that contains information,  
16 statements, or omissions 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.

# Proposed S.B. NO.1020 S.D.1

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;  
23 provided that compensation may be received if the person obtains

# Proposed S.B. NO.1020 S.D.1

1 the written consent of the donor to receive compensation from  
2 the charitable organization.

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

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

13 SECTION 9. Section 467B-9.5, Hawaii Revised Statutes, is  
14 amended to read as follows:

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

## Proposed S.B. NO.1020 S.D.1

1 prepared in accordance with generally accepted accounting  
2 principles by an independent certified public accountant, or as  
3 otherwise required by the attorney general."

4 SECTION 10. Section 467B-9.6, Hawaii Revised Statutes, is  
5 amended to read as follows:

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

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

# Proposed S.B. NO.1020 S.D.1

1 commercial co-venturer, or other person from continuing the  
2 violation or doing any acts in furtherance thereof, and for any  
3 other relief that the court deems appropriate."

4 SECTION 11. Section 467B-11.5, Hawaii Revised Statutes, is  
5 amended to read as follows:

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

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

17 (2) Parent-teacher associations;

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

21 (A) Hawaii Association of Independent Schools;

22 (B) Hawaii Council of Private Schools;

23 (C) Western Association of Schools and Colleges;

# Proposed S.B. NO.1020 S.D.1

- 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



# Proposed S.B. NO.1020 S.D.1

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 three fiscal years, it received,  
14 on average, less than \$25,000 in contributions."

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

17 "(a) Every professional fundraising counsel or professional  
18 solicitor, prior to any solicitation, shall register with the  
19 department. The registration statement shall contain the  
20 information set forth in subsection (e). The registration  
21 statement shall be accompanied by a fee in the amount of \$250,  
22 or in the amount and with any additional sums as may be  
23 prescribed by the attorney general. Renewal registration

# Proposed S.B. NO.1020 S.D.1

1 statements shall be filed with the department on or before July  
2 1 of each calendar year by each professional fundraising counsel  
3 or professional solicitor. The renewal statement shall contain  
4 the information set forth in subsection (e). A renewal fee of  
5 \$250, or in any amount and with any additional sums as may be  
6 prescribed by the attorney general, shall accompany the renewal  
7 statement. If a renewal registration required under this  
8 section is not filed, unless it is shown that the failure is due  
9 to reasonable cause, a fine of \$20 shall be imposed for each day  
10 during which the violation continues; provided that the total  
11 amount imposed under this subsection shall not exceed \$1,000."

12 SECTION 13. Statutory material to repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 14. This Act shall take effect upon its approval  
15

# Proposed S.B. NO.1020 S.D.1

**Report Title:**

Charitable Solicitation of Funds from the Public

**Description:**

Extends reporting requirements to commercial co-venturers, clarifies the definition of "Professional solicitor" to include professional fundraising counsel who have custody and/or control of contributions, allows for penalties to be imposed on commercial co-venturers, professional fundraising counsel, and professional solicitors 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.*