

JAN 16 2014

A BILL FOR AN ACT

RELATING TO CHARITABLE SOLICITATION.

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

1 SECTION 1. Chapter 467B, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§467B- Collection boxes; required disclosures. (a)

5 The front of every collection box shall conspicuously display
6 the following:

- 7 (1) The name, address, telephone number, and, if
8 available, the internet web address of the owner and
9 operator of the collection box; and
- 10 (2) A statement, in at least two-inch typeface, that
11 either reads, "this collection box is owned and
12 operated by a for-profit organization" or "this
13 collection box is owned and operated by a nonprofit
14 organization".

15 (b) If the collection box is owned by a charitable
16 organization, the front of the collection box shall also
17 conspicuously display a statement describing the charitable
18 cause that will benefit from the donations.



1 (c) If the collection box is owned by a for-profit entity,
2 the front of the collection box shall also conspicuously display
3 a statement that reads "this donation is not tax deductible".
4 If the collection box is owned and operated by a for-profit
5 professional solicitor, the solicitor may post notice of
6 donations to a charitable cause only on the sides of the box.
7 This notice shall always be smaller in size than the for-profit
8 entity's name and address and shall constitute only twenty-five
9 per cent of the notice space of the box.

10 (d) For purposes of this section, a "collection box" means
11 an unattended canister, box, bin, receptacle, or similar device,
12 used for soliciting and collecting donations of salvageable
13 personal property."

14 SECTION 2. Section 467B-1, Hawaii Revised Statutes, is
15 amended by amending the definition of "professional solicitor"
16 to read as follows:

17 "'Professional solicitor" means any person who, for a
18 financial or other consideration, solicits contributions in this
19 State for a charitable organization, or any person with whom the
20 professional solicitor independently contracts to solicit for
21 contributions. A person who is otherwise a professional
22 fundraising counsel shall be deemed a professional solicitor if



1 the person's compensation is related to the amount of
2 contributions received or has custody or control of
3 contributions received. For the purposes of this chapter, a
4 professional solicitor shall be classified as a for-profit
5 organization. The term does not include a bona fide volunteer.
6 The term includes a salaried officer or employee of a charitable
7 organization if the salaried officer or employee of the
8 charitable organization receives percentage compensation. The
9 term does not include an attorney, investment counselor or
10 advisor, financial advisor, or banker, or other person who:

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

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

16 SECTION 3. Section 467B-2.1, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) Every public benefit corporation domiciled in Hawaii
19 and every charitable organization not exempted by section
20 467B-11.5 shall register with the department prior to conducting
21 any solicitation of contributions or prior to having any
22 solicitation of contributions conducted on its behalf by others.



1 Two authorized officers of the charitable organization shall
2 sign the registration form and shall certify that the statements
3 therein are true and correct to the best of their knowledge
4 subject to penalties imposed by section 710-1063. A central or
5 parent organization that has received a group exemption letter
6 from the Internal Revenue Service may submit a consolidated
7 application for registration [~~may, at the option of the~~
8 ~~charitable organization, be submitted by a parent organization]~~
9 for itself and any or all of [~~its related foundations,~~
10 ~~supporting organizations, chapters, branches, or affiliates in~~
11 ~~this State.~~] the subordinate organizations covered under the
12 group exemption that are included in the central or parent
13 organization's annual information return to the Internal Revenue
14 Service."

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

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



1 prescribed by the attorney general. The attorney general may
2 require the financial report to be submitted electronically.
3 This report shall be signed under penalty provided by section
4 710-1063 by the authorized contracting agent for the
5 professional solicitor [~~and two authorized officials of the~~
6 ~~charitable organization~~] and shall report gross revenue from
7 Hawaii donors and national gross revenue from a solicitation
8 activity or campaign. If a financial report required under this
9 section is not filed, taking into account any extension of time
10 for filing, unless it is shown that the failure is due to
11 reasonable cause, a fine of \$20 shall be imposed for each day
12 during which the violation continues; provided that the total
13 amount imposed under this subsection shall not exceed \$1,000.
14 The professional solicitor shall provide a copy of the financial
15 report to the charitable organization to which the financial
16 report pertains within ten days of its submission of the report
17 to the attorney general. A professional solicitor shall
18 maintain during each solicitation campaign and for not less than
19 three years after the completion of that campaign the following
20 records, which shall be available for inspection upon demand by
21 the attorney general:



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

11 SECTION 5. Section 467B-5.5, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§467B-5.5 Commercial co-venturer's charitable sales**

14 **promotions.** (a) All charitable sales promotions by a
15 commercial co-venturer shall disclose the name of the commercial
16 co-venturer.

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



1 written consent with the department not less than ten days prior
2 to the commencement of the charitable sales promotion within
3 this State. An authorized representative of the charitable
4 organization and the commercial co-venturer shall sign the
5 written consent, and the terms of the written consent shall
6 include the following:

- 7 (1) The goods or services to be offered to the public;
- 8 (2) The geographic area where, and the starting and final
9 date when, the offering is to be made;
- 10 (3) The manner in which the name of the charitable
11 organization is to be used, including any
12 representation to be made to the public as to the
13 amount or per cent per unit of goods or services
14 purchased or used that is to benefit the charitable
15 organization;
- 16 (4) A provision for a final accounting on a per unit basis
17 to be given by the commercial co-venturer to the
18 charitable organization and the date when it is to be
19 made[+], which date shall be no more than thirty days
20 after the end of the charitable sales promotion; and
- 21 (5) The date when and the manner in which the benefit is
22 to be conferred on the charitable organization.



1 (c) A final accounting for each charitable sales promotion
2 shall be prepared by the commercial co-venturer following the
3 completion of the promotion. A copy of the final accounting
4 shall be provided to the attorney general not more than twenty
5 days after the copy is requested by the attorney general. [A
6 ~~copy of the final accounting shall be provided to the charitable~~
7 ~~organization not more than twenty days after the copy is~~
8 ~~requested by the charitable organization.] The final accounting
9 shall be kept by the commercial co-venturer for a period of
10 three years, unless the commercial co-venturer and the
11 charitable organization mutually agree that the accounting
12 should be kept by the charitable organization instead of the
13 commercial co-venturer.~~

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

20 (e) The attorney general may issue a cease and desist
21 order whenever the attorney general finds that a commercial



1 co-venturer has engaged in an act or practice that violates this
2 chapter.

3 (f) When the attorney general finds that a commercial
4 co-venturer has violated or is operating in violation of this
5 chapter, the attorney general may impose an administrative fine
6 not to exceed \$1,000 for each act that constitutes a violation
7 of this chapter and an additional penalty, not to exceed \$100
8 per day, for each day during which the violation continues. Any
9 person aggrieved by an action of the attorney general under this
10 section may request a hearing to review that action in
11 accordance with chapter 91 and rules adopted by the attorney
12 general. Any request for hearing shall be made within ten days
13 after the attorney general has served the person with notice of
14 the action, which notice shall be deemed effective upon
15 mailing."

16 SECTION 6. Section 467B-6.5, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) Every charitable organization required to register
19 pursuant to section 467B-2.1 shall annually file with the
20 department a report for its most recently completed fiscal year.
21 If the charitable organization files a Form 990 or 990-EZ with
22 the Internal Revenue Service, the annual report shall be a copy



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



1 charitable organizations that file the Form 990-N with the
2 Internal Revenue Service, or who are not required to file a Form
3 990 or 990-EZ with the Internal Revenue Service."

4 SECTION 7. Section 467B-6.5, Hawaii Revised Statutes, is
5 amended by amending subsection (d) to read as follows:

6 "(d) Each charitable organization filing a report required
7 by this section shall pay a filing fee to the department based
8 on the total amount of its gross revenues during the time
9 covered by the report at the close of the calendar or fiscal
10 year adopted by the charitable organization as follows:

- 11 (1) [~~\$10,~~ \$0, if less than \$25,000;
- 12 (2) \$25, if \$25,000 but less than \$50,000;
- 13 (3) \$50, if \$50,000 but less than \$100,000;
- 14 (4) \$100, if \$100,000 but less than \$250,000;
- 15 (5) \$150, if \$250,000 but less than \$500,000;
- 16 (6) \$200, if \$500,000 but less than \$1,000,000;
- 17 (7) \$250, if \$1,000,000 but less than \$2,000,000;
- 18 (8) \$350, if \$2,000,000 but less than \$5,000,000; or
- 19 (9) \$600, if \$5,000,000 or more."

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



1 **"§467B-9 Prohibited acts.** (a) No person, for the purpose
2 of soliciting contributions from persons in the State, shall use
3 the name of any other person except that of an officer,
4 director, or trustee of the charitable organization by or for
5 which contributions are solicited, without the written consent
6 of the other persons.

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

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



1 (c) No person, in connection with any solicitation or
2 sale, shall misrepresent or mislead anyone by any manner, means,
3 practice, or device whatsoever, to believe that the solicitation
4 or sale is being conducted on behalf of a charitable
5 organization or that the proceeds of the solicitation or sale
6 will be used for charitable purposes, if that is not the fact.

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

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

20 (2) The professional solicitor and any person who, for
21 compensation, acts as an agent, employee, independent
22 contractor, or otherwise on behalf of the professional



1 solicitor carries a copy of the authorization while
2 conducting solicitations, and exhibits it on request
3 to persons solicited or police officers or agents of
4 the department.

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



1 (f) No person, while soliciting, shall impede or obstruct,
2 with the intent to physically inconvenience the general public
3 or any member thereof in any public place or in any place open
4 to the public.

5 (g) No person shall submit for filing on behalf of any
6 charitable organization, professional fundraising counsel,
7 professional solicitor, or commercial co-venturer, any
8 statement, financial statement, report, attachment, or other
9 information to be filed with the department that contains
10 information, statements, or omissions that are false or
11 misleading.

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

18 (i) No person shall aid, abet, or otherwise permit any
19 persons to solicit contributions from persons in the State
20 unless the person soliciting contributions has complied with the
21 requirements of this chapter.



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

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

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

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

(p) No person or charitable organization shall fail to
12 make the collection box disclosures required by section
13 467B- ."

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

16 "**§467B-11.5 Charitable organizations exempted from**
17 **registration and financial disclosure requirements.** The
18 following charitable organizations shall not be subject to
19 sections 467B-2.1 and 467B-6.5, if the organization submits
20 ~~[information as the department may require]~~ to the department an
21 application for exemption to substantiate an exemption under
22 this section[+] and the department approves the organization's



1 application; provided that the attorney general may require the
2 application for exemption to be filed electronically with the
3 department and may require the use of electronic signatures:

4 (1) Any duly organized religious corporation, institution,
5 or society that is exempt from filing Form 990 with
6 the Internal Revenue Service pursuant to sections
7 6033(a)(3)(A)(i) and (iii) and 6033(a)(3)(C)(i) of the
8 Internal Revenue Code, as amended;

9 (2) Parent-teacher associations;

10 (3) Any educational institution that is licensed or
11 accredited by any of the following licensing or
12 accrediting organizations:

13 (A) Hawaii Association of Independent Schools;

14 (B) Hawaii Council of Private Schools;

15 (C) Western Association of Schools and Colleges;

16 (D) Middle States [~~Association of Colleges and~~
17 ~~Schools;~~] Commission on Higher Education;

18 (E) New England Association of Schools and Colleges;

19 (F) North Central Association of Colleges and
20 Schools;

21 (G) Northwest Commission on Colleges and
22 Universities;



- 1 (H) Southern Association of Colleges and Schools; or
2 (I) The National Association for the Education of
3 Young Children;
4 and any organization exempt from taxation under
5 section 501(c)(3) of the Internal Revenue Code
6 expressly authorized by, and having an established
7 identity with, such an educational institution;
8 provided that the organization's solicitation of
9 contributions is primarily directed to the students,
10 alumni, faculty, and trustees of the institutions and
11 their respective families;
- 12 (4) Any nonprofit hospital licensed by the State or any
13 similar provision of the laws of any other state;
- 14 (5) Any corporation established by an act of the United
15 States Congress that is required by federal law to
16 submit to Congress annual reports, fully audited by
17 the United States Department of Defense, of its
18 activities including itemized accounts of all receipts
19 and expenditures;
- 20 (6) Any agency of this State, another state, or the
21 federal government; and



1 (7) Any charitable organization that normally receives
2 less than \$25,000 in contributions annually, if the
3 organization does not employ or compensate a
4 professional solicitor or professional fundraising
5 counsel. For purposes of this paragraph, an
6 organization normally receives less than \$25,000 in
7 contributions annually if, during the immediately
8 preceding three fiscal years, it received, on average,
9 less than \$25,000 in contributions."

10 SECTION 10. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

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

13

INTRODUCED BY: 



S.B. NO. 2250

Report Title:

Charitable Solicitation

Description:

Requires certain disclosures on collection boxes for donated clothing and household items by for-profit and nonprofit organizations; clarifies registration requirement for Hawaii domiciled charitable organizations and by nonprofits covered by an IRS Group Exemption Ruling; authorizes the Attorney General to require electronic financial reporting by professional solicitors, imposes a late fee for late financial reports by professional solicitors; clarifies that commercial co-venturers must provide a final accounting within thirty days; clarifies exemptions from registration requirements; and makes other technical and housekeeping amendments to chapter 467B, Hawaii Revised Statutes.

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

