

S B. NO. 2793

JAN 23 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 read as follows:

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

5 The front of every collection box shall conspicuously display
6 both of 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.

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". For purposes of this chapter, a
15 professional solicitor shall be classified as a for-
16 profit organization.

17 (b) If the collection box is owned by a charitable
18 organization, the front of the collection box shall also

1 conspicuously display a statement describing the charitable
2 cause that will benefit from the donations.

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

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

16 SECTION 2. 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 467B-
20 11.5 shall register with the department prior to conducting any
21 solicitation of contributions or prior to having any
22 solicitation of contributions conducted on its behalf by
23 others. Two authorized officers of the charitable organization

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

14 SECTION 3. Section 467B-2.5, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

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

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

- 20 (1) The date and amount of each contribution received and
21 the name and address of each contributor;
- 22 (2) The name and residence of each employee, agent, or
23 other person involved in the solicitation;

- 1 (3) Records of all revenue received and expenses incurred
2 in the course of the solicitation campaign; and
3 (4) The location and account number of each bank or other
4 financial institution account in which the
5 professional solicitor has deposited revenue from the
6 solicitation campaign."

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

9 "**§467B-5.5 Commercial co-venturer's charitable sales**
10 **promotions.** (a) All charitable sales promotions by a
11 commercial co-venturer shall disclose the name of the commercial
12 co-venturer.

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

1 written consent, and the terms of the written consent shall
2 include the following:

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

4 (2) The geographic area where, and the starting and final
5 date when, the offering is to be made;

6 (3) The manner in which the name of the charitable
7 organization is to be used, including any
8 representation to be made to the public as to the
9 amount or per cent per unit of goods or services
10 purchased or used that is to benefit the charitable
11 organization;

12 (4) A provision for a final accounting on a per unit basis
13 to be given by the commercial co-venturer to the
14 charitable organization and the date when it is to be
15 made [+], which date shall be no more than thirty days
16 after the end of the charitable sales promotion; and

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

19 (c) A final accounting for each charitable sales promotion
20 shall be prepared by the commercial co-venturer following the
21 completion of the promotion. A copy of the final accounting
22 shall be provided to the attorney general not more than twenty
23 days after the copy is requested by the attorney general. [A

1 ~~copy of the final accounting shall be provided to the charitable~~
2 ~~organization not more than twenty days after the copy is~~
3 ~~requested by the charitable organization.]~~ The final accounting
4 shall be kept by the commercial co-venturer for a period of
5 three years, unless the commercial co-venturer and the
6 charitable organization mutually agree that the accounting
7 should be kept by the charitable organization instead of the
8 commercial co-venturer.

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

15 (e) The attorney general may issue a cease and desist
16 order whenever the attorney general finds that a commercial co-
17 venturer has engaged in an act or practice that violates this
18 chapter.

19 (f) When the attorney general finds that a commercial co-
20 venturer has violated or is operating in violation of this
21 chapter, the attorney general may impose an administrative fine
22 not to exceed \$1,000 for each act that constitutes a violation
23 of this chapter and an additional penalty, not to exceed \$100

1 per day, for each day during which the violation continues. Any
2 person aggrieved by an action of the attorney general under this
3 section may request a hearing to review that action in
4 accordance with chapter 91 and rules adopted by the attorney
5 general. Any request for hearing shall be made within ten days
6 after the attorney general has served the person with notice of
7 the action, which notice shall be deemed effective upon
8 mailing."

9 SECTION 5. 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
23 report not later than the fifteenth day of the fifth month

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

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

20 "(d) Each charitable organization filing a report required
21 by this section shall pay a filing fee to the department based
22 on the total amount of its gross revenues during the time

1 covered by the report at the close of the calendar or fiscal
2 year adopted by the charitable organization as follows:

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

12 SECTION 7. Section 467B-9, Hawaii Revised Statutes, is
13 amended to read as follows:

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

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

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

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

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

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

22 (1) The professional solicitor has obtained the written
23 authorization of two officers of the organization,

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

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

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

1 for the solicitation by the charitable organization,
2 professional fundraising counsel, professional solicitor, or
3 commercial co-venturer; provided that the use of the following
4 statement shall not be deemed a prohibited exploitation:

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

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

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

20 (h) No person shall solicit contributions from persons in
21 the State or otherwise operate in the State as a charitable
22 organization, an exempt charitable organization, professional
23 fundraising counsel, professional solicitor, or commercial co-

1 venturer unless the person has filed the information required by
2 this chapter with the department in a timely manner.

3 (i) No person shall aid, abet, or otherwise permit any
4 persons to solicit contributions from persons in the State
5 unless the person soliciting contributions has complied with the
6 requirements of this chapter.

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

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

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

21 (m) No person shall receive compensation from a charitable
22 organization for obtaining moneys or bequests for that
23 charitable organization if that person has also received

1 compensation for advising the donor to make the donation;
2 provided that compensation may be received if the person obtains
3 the written consent of the donor to receive compensation from
4 the charitable organization.

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

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

15 (p) No person or charitable organization shall fail to
16 make the collection bin disclosures required by section
17 467B- ."

18 SECTION 8. Section 467B-11.5, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§467B-11.5 Charitable organizations exempted from
21 registration and financial disclosure requirements. The
22 following charitable organizations shall not be subject to
23 sections 467B-2.1 and 467B-6.5, if the organization submits

1 ~~[information as the department may require]~~ to the department an
2 application for exemption to substantiate an exemption under
3 this section[+] and the department approves the organization's
4 application. The attorney general may require the application
5 for exemption to be filed electronically with the department and
6 may require the use of electronic signatures.

- 7 (1) Any duly organized religious corporation, institution,
8 or society that is exempt from filing Form 990 with
9 the Internal Revenue Service pursuant to sections
10 6033(a)(3)(A)(i) and (iii) and 6033(a)(3)(C)(i) of the
11 Internal Revenue Code, as amended;
- 12 (2) Parent-teacher associations;
- 13 (3) Any educational institution that is licensed or
14 accredited by any of the following licensing or
15 accrediting organizations:
- 16 (A) Hawaii Association of Independent Schools;
- 17 (B) Hawaii Council of Private Schools;
- 18 (C) Western Association of Schools and Colleges;
- 19 (D) Middle States [~~Association of Colleges and~~
20 ~~Schools,~~] Commission on Higher Education;
- 21 (E) New England Association of Schools and Colleges;
- 22 (F) North Central Association of Colleges and
23 Schools;

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

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1 (7) Any charitable organization that normally receives less
2 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 9. Statutory material to repealed is bracketed and
11 stricken. New statutory material is underscored.

12 SECTION 10. This Act shall take effect upon its approval.

13
14 INTRODUCED BY: 

15 BY REQUEST

16

Report Title:

Charitable Solicitation

Description:

Requires certain disclosures on collection bins for donated clothing and household items by for profit and non profit 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.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

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

PURPOSE: The purposes of this bill are to amend chapter 467B, Hawaii Revised Statutes (HRS), to: (1) clarify the existing registration requirement; (2) require conspicuous disclosures by for-profit businesses and charitable organizations at collection bins for household items, clothing and other and other donated items; (3) eliminate signatures by officers of the charity on a solicitors end of campaign financial report to facilitate its electronic submission to the attorney general and to impose late fees on late submissions; (4) clarify when a final accounting is due by a commercial co-venturer conducting cause related marketing and authorize the attorney general to impose a civil penalty on any commercial co-venturer who violates section 467B-5.5(b), HRS; (5) eliminate the annual fee for charities that normally receive under \$25,000 in contributions annually to encourage charities exempt from registration to do so anyway; (6) clarify the exemption for accredited educational institutions; and (7) make other non-substantive and technical amendments to chapter 467B, HRS.

MEANS: Add a new section to chapter 467B, HRS, and amend sections 467B-2.1(a), 467B-2.5(a), 467B-5.5, 467B-6.5(a) and (d), 467B-9, and 467B-11.5, HRS.

JUSTIFICATION: In addition to providing greater clarity as to what charitable organizations must register with the attorney general and which are exempt from registration, this bill would create new disclosure requirements at "collection bins" operated by both for-profit and charitable organizations for consumer and donor protection purposes. The bill also facilitates the electronic submission of financial reports by registered charities by repealing the requirement that such reports be signed by two officers of the charity.

Instead, the amendments require the commercial co-venturer to provide a copy of the end of solicitation campaign financial report to the charitable organizations and the failure to do so is a prohibited practice. The bill also provides late fees similar to other late fees imposed under chapter 467B, HRS, for the late submission of end of solicitation campaign financial reports that are generally due 90 days after the end of any campaign. The bill also eliminates an inconsistency in section 467B-5.5, HRS, by requiring any commercial co-venturer to provide an accounting within 30 days after the end of the cause related marketing effort. To give charities that are otherwise exempt from registration a financial incentive to register anyway, the bill proposes to repeal the annual \$10 fee for charities that receive less than \$25,000 in revenues. The bill also clarifies the exemption for accredited educational institutions by incorporating the change of the name of one of the regional accrediting organizations and makes other stylistic nonsubstantive amendments to chapter 467B, HRS.

Impact on the public: This bill provide greater donor protections, facilitate the Attorney General's transitioning to electronic registration systems that provide greater and more robust public information and provide greater clarity to registered charitable organizations and their commercial co-venturers and professional solicitors.

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.