
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-2.1, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:
3 "(a) Every public benefit corporation domiciled in Hawaii
4 and every charitable organization not exempted by section
5 467B-11.5 shall register with the department prior to conducting
6 any solicitation of contributions or prior to having any
7 solicitation of contributions conducted on its behalf by others.
8 Two authorized officers of the charitable organization shall
9 sign the registration form and shall certify that the statements
10 therein are true and correct to the best of their knowledge
11 subject to penalties imposed by section 710-1063. A central or
12 parent organization that has received a group exemption letter
13 from the Internal Revenue Service may submit a consolidated
14 application for registration [may, at the option of the
15 charitable organization, be submitted by a parent organization]
16 for itself and any or all of [its related foundations,
17 supporting organizations, chapters, branches, or affiliates in
18 this State.] the subordinate organizations covered under the



1 group exemption that are included in the central or parent
2 organization's annual information return to the Internal Revenue
3 Service."

4 SECTION 2. Section 467B-2.5, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) Within ninety days after a solicitation campaign or
7 event has been completed and on the anniversary of the
8 commencement of a solicitation campaign lasting more than one
9 year, a professional solicitor shall file with the attorney
10 general a financial report for the campaign, including gross
11 revenue and an itemization of all expenses incurred on a form
12 prescribed by the attorney general. The attorney general may
13 require the financial report to be submitted electronically.

14 This report shall be signed under penalty provided by section
15 710-1063 by the authorized contracting agent for the
16 professional solicitor [~~and two authorized officials of the~~
17 ~~charitable organization]~~ and shall report gross revenue from
18 Hawaii donors and national gross revenue from a solicitation
19 activity or campaign. If a financial report required under this
20 section is not filed in a timely manner, an initial fine of \$100
21 shall be imposed, and an additional fine of \$20 per day shall be



1 imposed for each day thereafter until the financial report is
2 filed; provided that the total fine imposed under this
3 subsection shall not exceed \$1,000. The attorney general may
4 waive the fine imposed by this subsection if there is reasonable
5 cause for the failure to file. The professional solicitor shall
6 provide a copy of the financial report to the charitable
7 organization to which the financial report pertains within ten
8 days of its submission of the report to the attorney general. A
9 professional solicitor shall maintain during each solicitation
10 campaign and for not less than three years after the completion
11 of that campaign the following records, which shall be available
12 for inspection upon demand by the attorney general:

- 13 (1) The date and amount of each contribution received and
14 the name and address of each contributor;
- 15 (2) The name and residence of each employee, agent, or
16 other person involved in the solicitation;
- 17 (3) Records of all revenue received and expenses incurred
18 in the course of the solicitation campaign; and
- 19 (4) The location and account number of each bank or other
20 financial institution account in which the



1 professional solicitor has deposited revenue from the
2 solicitation campaign."

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;



- 1 (2) The geographic area where, and the starting and final
2 date when, the offering is to be made;
- 3 (3) The manner in which the name of the charitable
4 organization is to be used, including any
5 representation to be made to the public as to the
6 amount or per cent per unit of goods or services
7 purchased or used that is to benefit the charitable
8 organization;
- 9 (4) A provision for a final accounting on a per unit basis
10 to be given by the commercial co-venturer to the
11 charitable organization and the date when it is to be
12 made[+], which date shall be no more than ninety days
13 after the end of the charitable sales promotion; and
- 14 (5) The date when and the manner in which the benefit is
15 to be conferred on the charitable organization.
- 16 (c) A final accounting for each charitable sales promotion
17 shall be prepared by the commercial co-venturer following the
18 completion of the promotion. A copy of the final accounting
19 shall be provided to the attorney general not more than twenty
20 days after the copy is requested by the attorney general. [A
21 ~~copy of the final accounting shall be provided to the charitable~~



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

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

14 (e) The consent shall be signed by the authorized
15 representative of the commercial co-venturer and the charitable
16 organization certifying that the statements made therein are
17 true and correct to the best of their knowledge subject to
18 penalties imposed by section 710-1063. The attorney general may
19 require the written consent to be submitted electronically and
20 may require the use of electronic signatures.



1 (f) The attorney general may issue a cease and desist
2 order whenever the attorney general finds that a commercial co-
3 venturer has engaged in an act or practice that violates this
4 chapter.

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

18 SECTION 4. Section 467B-6.5, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By amending subsections (a) and (b) to read:



1 "(a) Every charitable organization required to register
2 pursuant to section 467B-2.1 shall annually file with the
3 department a report for its most recently completed fiscal year.
4 If the charitable organization files a Form 990 or 990-EZ with
5 the Internal Revenue Service, the annual report shall be a copy
6 of that Form 990 or 990-EZ. If the registered charitable
7 organization is required to file a Form 990-T with the Internal
8 Revenue Service, the annual report shall include a copy of that
9 Form 990-T. If a charitable organization is not required to
10 file a Form 990 or 990-EZ with the Internal Revenue Service, the
11 annual report shall contain all information prescribed by the
12 department. [~~The charitable organization shall file its annual
13 report not later than the fifteenth day of the fifth month
14 following the close of its fiscal year.] The annual report for a
15 charitable organization that files a Form 990 or 990-EZ shall be
16 electronically submitted to the department within ten business
17 days of the date that the organization files the form with the
18 Internal Revenue Service. The annual report for a charitable
19 organization that files a Form 990-N or that is not required to
20 file a Form 990 or 990-EZ shall be electronically submitted to
21 the department no later than the fifteenth day of the fifth~~



1 month following the close of its fiscal year. An authorized
2 officer or agent of the charitable organization shall sign the
3 annual report and shall certify that the statements therein are
4 true and correct to the best of the officer's knowledge subject
5 to penalties imposed by section 710-1063. A charitable
6 organization that has obtained an extension of time to file a
7 Form 990 or 990-EZ from the Internal Revenue Service [~~may obtain~~
8 ~~an extension of time to file the annual report with the~~
9 ~~department, by filing with the department a copy of the Internal~~
10 ~~Revenue Service's approved extension of time to file.] shall
11 provide a copy to the attorney general within twenty days after
12 the copy is requested by the attorney general. The annual
13 report shall be accompanied by a filing fee as prescribed by
14 subsection (d). The department shall accept, under conditions
15 prescribed by the attorney general, a copy or duplicate original
16 of financial statements, reports, or returns filed by the
17 charitable organization with the Internal Revenue Service or
18 another state having requirements similar to the provisions of
19 this section; provided that the attorney general may prescribe
20 the form of the annual financial report for charitable
21 organizations that file the Form 990-N with the Internal Revenue~~



1 Service, or who are not required to file a Form 990 or 990-EZ
2 with the Internal Revenue Service.

3 (b) A charitable organization with [~~gross revenue~~
4 contributions in excess of \$500,000 in the year covered by the
5 annual financial report and a charitable organization required
6 to obtain an audit report by a governmental authority or a third
7 party shall include with its annual financial report, an audit
8 report, prepared in accordance with generally accepted
9 accounting principles, by a certified public accountant [~~+~~
10 ~~provided that any charitable organization shall include with its~~
11 ~~annual financial report an audit report, prepared in accordance~~
12 ~~with generally accepted accounting principles, by a certified~~
13 ~~public accountant if required to do so by a governmental~~
14 ~~authority or a third party. For the purpose of this subsection,~~
15 ~~"gross revenue" does not include grants or fees from government~~
16 ~~agencies or revenue derived from funds held in trust for the~~
17 ~~benefit of the organization]."~~

18 2. By amending subsection (d) to read:

19 "(d) Each charitable organization filing a report required
20 by this section shall pay a filing fee to the department based
21 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 5. Section 467B-11.5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§467B-11.5 Charitable organizations exempted from**
 15 **registration and financial disclosure requirements.** The
 16 following charitable organizations shall not be subject to
 17 sections 467B-2.1 and 467B-6.5, if the organization submits
 18 [~~information as the department may require to substantiate an~~
 19 ~~exemption under this section:] an application for an exemption
 20 to the department and the department approves the organization's
 21 application:~~



- 1 (1) Any duly organized religious corporation, institution,
2 or society that is exempt from filing Form 990 with
3 the Internal Revenue Service pursuant to sections
4 6033(a)(3)(A)(i) and (iii) and 6033(a)(3)(C)(i) of the
5 Internal Revenue Code, as amended;
- 6 (2) Parent-teacher associations;
- 7 (3) Any educational institution that is licensed or
8 accredited by any of the following licensing or
9 accrediting organizations:
 - 10 (A) Hawaii Association of Independent Schools;
 - 11 (B) Hawaii Council of Private Schools;
 - 12 (C) Western Association of Schools and Colleges;
 - 13 (D) Middle States Association of Colleges and
14 Schools.
 - 15 (E) New England Association of Schools and Colleges;
 - 16 (F) North Central Association of Colleges and
17 Schools;
 - 18 (G) Northwest Commission on Colleges and
19 Universities;
 - 20 (H) Southern Association of Colleges and Schools;
 - 21 [~~ex~~]



- 1 (I) The National Association for the Education of
- 2 Young Children; or
- 3 (J) The Northwest Accreditation Commission for
- 4 primary and secondary schools;
- 5 and any organization exempt from taxation under
- 6 section 501(c)(3) of the Internal Revenue Code
- 7 expressly authorized by, and having an established
- 8 identity with~~[r such]~~ an educational institution~~[r]~~
- 9 accredited by one of the foregoing accrediting
- 10 agencies; provided that the organization's
- 11 solicitation of contributions is primarily directed to
- 12 the students, alumni, faculty, and trustees of the
- 13 institutions and 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;



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

12 The attorney general may require the application for exemption
13 to be filed electronically with the department and may require
14 the use of electronic signatures."

15 SECTION 6. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 7. This Act shall take effect upon its approval.



Report Title:

Charitable Solicitation

Description:

Authorizes the Attorney General to require electronic financial reporting by professional solicitors. Imposes a fine for late financial reports by professional solicitors and for commercial co-venturers who are found by the Attorney General to have violated chapter 467B, HRS. Clarifies exemptions from registration requirements. (SD2)

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