

JAN 27 2016

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 definitions of "professional fund-raising
3 counsel" or "professional fundraising counsel" and "solicit" and
4 "solicitation" to read as follows:

5 ""Professional fund-raising counsel" or "professional
6 fundraising counsel" means any person who, for compensation,
7 plans, conducts, manages, advises, consults, or prepares
8 material for, or with respect to, the solicitation of
9 contributions in this State for a charitable organization, but
10 who actually solicits no contributions as a part of the person's
11 services, and who does not employ, procure, or engage any
12 compensated person to solicit contributions. The term shall not
13 include a bona fide volunteer, salaried officer, or employee of
14 a charitable organization[-], or if the only services performed
15 are to plan, conduct, manage, advise, consult, or prepare grant
16 or subsidy application materials for a charitable organization.

17 "Solicit" and "solicitation" mean a request directly or
18 indirectly for money, credit, property, financial assistance, or

1 thing of value on the plea or representation that the money,
2 credit, property, financial assistance, or thing of value, or
3 any portion thereof, will be used for a charitable purpose or to
4 benefit a charitable organization. These terms shall include
5 the following:

- 6 (1) Any oral or written request [†]; [†]
- 7 (2) The making of any announcement to any organization for
8 the purpose of further dissemination, including
9 announcements to the press, over the radio or
10 television, or by telephone, telegraph, or facsimile,
11 concerning an appeal or campaign by or for any
12 charitable organization or purpose [†]; [†]
- 13 (3) The distribution, circulation, posting, or publishing
14 of any handbill, written advertisement, or other
15 publication that directly or by implication seeks to
16 obtain public support [†]; [†]
- 17 (4) Where the sale or offer or attempted sale, of any
18 advertisement, advertising space, book, card, tag,
19 coupon, device, magazine, membership, merchandise,
20 subscription, flower, ticket, candy, cookies, or other
21 tangible item in connection with which any appeal is
22 made for any charitable organization or purpose; or
23 where the name of any charitable organization is used

1 or referred to in any appeal as an inducement or
2 reason for making any sale; or where in connection
3 with any sale, any statement is made that the whole or
4 any part of the proceeds from any sale will be used
5 for any charitable purpose or to benefit any
6 charitable organization[+]; [+]

7 (5) A request made through the use of receptacles for
8 contributions such as honor boxes, vending machines,
9 wishing wells, contribution boxes, and novelty
10 machines, where a charitable appeal is used or
11 referred to or implied as an inducement or reason to
12 contribute.

13 A solicitation occurs whether or not the person making the
14 solicitation receives any contribution. However, the term shall
15 not include the submission of a grant or subsidy proposal or
16 application to a governmental authority or any organization
17 exempt from taxation under section 501(c)(3) of the Internal
18 Revenue Code."

19 SECTION 2. Section 467B-1.5, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "[+]§467B-1.5[+] Professional solicitors; required
22 disclosures. [~~A professional solicitor who makes an oral~~
23 ~~solicitation by telephone, door to door, or otherwise shall~~

1 ~~furnish to each contributor, prior to collecting or attempting~~
2 ~~to collect any contribution, a written confirmation of the~~
3 ~~expected contribution, containing the following information~~
4 ~~clearly and conspicuously:~~

5 ~~(1) The full legal name, address, and telephone number of~~
6 ~~the individual professional solicitor who directly~~
7 ~~communicated with the contributor; and~~

8 ~~(2) A disclosure that the contribution is not tax-~~
9 ~~deductible, if applicable, or, if the professional~~
10 ~~solicitor maintains that the contribution is tax-~~
11 ~~deductible in whole or in part, the portion of the~~
12 ~~contribution that the professional solicitor maintains~~
13 ~~is tax deductible.] (a) Every professional~~

14 solicitor, and every employee or agent thereof, who solicits
15 contributions from a prospective donor or contributor in this
16 State shall at the outset of any oral or written request for a
17 contribution:

18 (1) Identify themselves by their true surname and first
19 name, and the name of their employer or the contractor
20 as the case may be, that is compensating the
21 individual making the solicitation;

1 (2) Identify the name of the professional solicitor
2 registered with the department of the attorney general
3 that has contracted with the charitable organization
4 to provide the solicitation services and, if the
5 individual is employed by a subcontractor, the name of
6 the registered subcontractor;

7 (3) Disclose that the person making the oral or written
8 request for a donation is being paid to make such
9 solicitation and the name of the charitable
10 organization on whose behalf the person making the
11 request is soliciting for; and

12 (4) Disclose, orally and in writing, the fact that a copy
13 of the professional solicitor's registration data and
14 financial reports are available from the department of
15 the attorney general.

16 (b) A professional solicitor who makes an oral
17 solicitation by telephone, door-to-door, or otherwise, prior to
18 collecting or attempting to collect any contribution, shall
19 provide a written confirmation of the expected contribution and
20 clearly disclose whether the contribution is not tax-deductible,
21 if applicable, or, if the professional solicitor maintains that
22 the contribution is tax-deductible in whole or in part, the

1 portion of the contribution that the professional solicitor
2 maintains is tax-deductible. The written confirmation shall
3 also conspicuously disclose the name and current address of the
4 registered professional solicitor."

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

7 "(a) Within ninety days after a solicitation campaign or
8 event has been completed and on the anniversary of the
9 commencement of a solicitation campaign lasting more than one
10 year, a professional solicitor shall file with the attorney
11 general a financial report for the campaign, including gross
12 revenue and an itemization of all expenses incurred on a form
13 prescribed by the attorney general. The attorney general may
14 require the financial report to be submitted electronically.
15 This report shall be signed under penalty provided by section
16 710-1063 by the authorized contracting agent for the
17 professional solicitor [~~and two authorized officials of the~~
18 ~~charitable organization~~] and shall report gross revenue from
19 Hawaii donors and national gross revenue from a solicitation
20 activity or campaign. If a financial report required under this
21 section is not filed in a timely manner, an initial late filing
22 fee of \$100 shall be imposed and an additional late filing fee
23 of \$20 per day shall be imposed for each day during which the

1 violation continues; provided that the total amount imposed
2 under this subsection shall not exceed \$1,000. The attorney
3 general may waive all or part of the late filing fee imposed by
4 this subsection if there is a reasonable cause for the failure
5 to timely file. The professional solicitor shall provide a copy
6 of the financial report to the charitable organization to which
7 the financial report pertains within ten days of its submission
8 of the report to the attorney general. A professional solicitor
9 shall maintain during each solicitation campaign and for not
10 less than three years after the completion of that campaign the
11 following records, which shall be available for inspection upon
12 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
21 professional solicitor has deposited revenue from the
22 solicitation campaign."

1 SECTION 4. Section 467B-5.5, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

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

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

11 "(e) If a return, report, or filing fee required under
12 this section is not filed or paid, taking into account any
13 extension of time for filing, unless it is shown that the
14 failure is due to reasonable cause, a [~~fine~~] late filing fee of
15 \$20 shall be imposed for each day during which the violation
16 continues; provided that the total amount imposed under this
17 subsection shall not exceed \$1,000."

18 SECTION 6. 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 substantiate an
2 exemption under this section:

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

8 (2) Parent-teacher associations;

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

12 (A) Hawaii Association of Independent Schools;

13 (B) Hawaii Council of Private Schools;

14 (C) Western Association of Schools and Colleges;

15 (D) Middle States Association of Colleges and
16 Schools;

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

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

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

22 (H) Southern Association of Colleges and Schools;

23 [~~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, such an educational institution;
9 provided that the organization's solicitation of
10 contributions is primarily directed to the students,
11 alumni, faculty, and trustees of the institutions and
12 their respective families;
- 13 (4) Any nonprofit hospital, adult day health center,
14 hospice, intermediate care facility for individuals
15 with intellectual disabilities, skilled nursing
16 facility, and intermediate care facility that is
17 licensed or medicare certified by the State or any
18 similar provision of the laws of any other state;
- 19 (5) Any corporation established by an act of the United
20 States Congress that is required by federal law to
21 submit to Congress annual reports, fully audited by
22 the United States Department of Defense, of its

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1 activities including itemized accounts of all receipts
2 and expenditures;

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

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

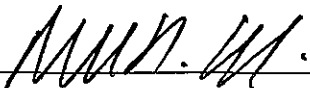
14 SECTION 7. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY:



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BY REQUEST

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Report Title:

Charitable Solicitation

Description:

Amends chapter 467B, Hawaii Revised Statutes, to require affirmative disclosures to donors by professional solicitors, to clarify the chapter's exemptions from registration, and to make other technical amendments to Hawaii's charitable solicitation law.

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 purpose of this bill is to amend chapter 467B, Hawaii Revised Statutes (HRS), to require affirmative disclosures to donors by professional solicitors, to clarify the chapter's exemptions from registration, and to make other technical amendments to Hawaii's charitable solicitation law.

MEANS: Amend sections 467B-1, 467B-1.5, 467B-2.5 (a), 467B-5.5(d), 467B-6.5(e), and 467B-11.5, HRS.

JUSTIFICATION: Hawaii does not presently require paid professional solicitors to inform donors at the outset of any communication that the person or organization contacting them is being paid to make the donor contact. The absence of such a requirement allows paid telemarketers and others to employ deceptive practices to entice potential donors to give money. Donors will be better protected and better informed if paid solicitors are required to disclose at the outset of any donor contact that they are being paid to make the donor contact. This bill will also clarify definitions in chapter 467B, HRS, clarify the exemptions from registration and make other technical, nonsubstantive amendments.

Impact on the Public. None.

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.