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# A BILL FOR AN ACT

RELATING TO CHARITABLE ORGANIZATIONS.

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



1        (b) If the collection box is owned by a charitable  
2 organization, the front of the collection box shall also  
3 conspicuously display a statement describing the charitable  
4 cause that will benefit from the donations.

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

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

18        SECTION 2. Section 28-5.2, Hawaii Revised Statutes, is  
19 amended to read as follows:

20        "[+] §28-5.2[+] **Protection of charitable assets; attorney**  
21 **general's authority.** (a) The attorney general shall represent



1 the public interest in the protection of charitable assets and  
2 may:

3 (1) Enforce the application of a charitable asset in  
4 accordance with:

5 (A) The law and terms governing the use, management,  
6 investment, distribution, and expenditure of the  
7 charitable asset; and

8 (B) The charitable purpose of the person holding the  
9 asset;

10 (2) Act to prevent or remedy:

11 (A) The misapplication, diversion, or waste of a  
12 charitable asset; or

13 (B) A breach of fiduciary or other legal duty in the  
14 governance, management, or administration of a  
15 charitable asset; or

16 (3) Commence or intervene in an action to:

17 (A) Prevent, remedy, or obtain damages for:

18 (i) The misapplication, diversion, or waste of a  
19 charitable asset; or



1 (ii) A breach of fiduciary or other legal duty in  
2 the governance, management, or  
3 administration of a charitable asset; or

4 (B) Determine that an asset is a charitable asset.

5 (b) If the attorney general has reason to believe an  
6 investigation is necessary to determine whether action is  
7 advisable under this section, the attorney general may conduct  
8 an investigation, including exercising administrative subpoena  
9 power under sections 28-2.5 and 467B-9.3.

10 (c) This section shall not limit the powers and duties of  
11 the attorney general under the laws of this State.

12 (d) As used in this section "charitable asset" means  
13 property that is given, received, or held for a charitable  
14 purpose. The term does not include property acquired or held  
15 for a for-profit purpose.

16 (e) As used in this section, "property" includes all  
17 interests in real property or tangible or intangible personal  
18 property, including cash, remainder interests, land, and  
19 conservation or preservation easements or restrictions. The  
20 remainder interest in a charitable remainder trust is property  
21 held for a charitable purpose, as is the current interest in a



1 charitable lead trust, property held for ten years in a building  
2 fund, and property given to a charitable organization subject to  
3 a restriction on its use. Property held in a revocable trust  
4 that provides a remainder interest for a charitable purpose is  
5 not a charitable asset while the settlor is alive because the  
6 settlor can revoke or change the interest."

7 SECTION 3. Section 467B-2.1, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§467B-2.1 Registration of charitable organizations ~~[−]~~;  
10 deactivation. (a) Every public benefit corporation domiciled  
11 in Hawaii and every charitable organization not exempted by  
12 section 467B-11.5 shall register with the department prior to  
13 conducting any solicitation of contributions or prior to having  
14 any solicitation of contributions conducted on its behalf by  
15 others. ~~[Two]~~ An authorized ~~[officers]~~ officer or agent of the  
16 charitable organization shall sign the registration form and  
17 shall certify that the statements therein are true and correct  
18 to the best of ~~[their]~~ the officer's or agent's knowledge  
19 subject to penalties imposed by section 710-1063. A central or  
20 parent organization that has received a group exemption letter  
21 from the Internal Revenue Service may submit a consolidated



1 application for registration for itself and any or all of the  
2 subordinate organizations covered under the group exemption that  
3 are included in the central or parent organization's annual  
4 information return to the Internal Revenue Service.

5 (b) Any charitable organization registered in Hawaii or  
6 any charitable organization exempted from registration pursuant  
7 to section 467B-11.5 that will no longer be conducting any  
8 solicitation of contributions or having any solicitation of  
9 contributions conducted on its behalf by others and that wishes  
10 to be deactivated shall file a request for deactivation with the  
11 attorney general in writing. The attorney general shall  
12 deactivate the organization after being satisfied that all  
13 obligations of the organization under this chapter have been  
14 met. Deactivation of a charitable organization shall not  
15 deprive the attorney general of jurisdiction over the activities  
16 of the charitable organization that occurred while the  
17 organization was registered or should have been registered.

18 [~~b~~] (c) The attorney general may make available a  
19 registration and a deactivation form to assist in the  
20 registration or deactivation by charitable organizations.



1           ~~[-e-]~~ (d) The attorney general may require that  
2 registration or deactivation forms be filed with the department  
3 electronically and may require the use of electronic  
4 signatures."

5           SECTION 4. 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]~~ or within ninety days of the  
9 anniversary of the commencement of a solicitation campaign  
10 lasting more than one year, a professional solicitor shall file  
11 with the attorney general a financial report for the campaign,  
12 including gross revenue from Hawaii donors and national gross  
13 revenue and an itemization of all expenses incurred on a form  
14 prescribed by the attorney general. The attorney general may  
15 require the financial report to be submitted electronically~~[-]~~  
16 and may require the use of electronic signatures. This report  
17 shall be signed ~~[under penalty provided by section 710-1063]~~ by  
18 the professional solicitor or by an authorized [contracting]  
19 officer or agent [for] of the professional solicitor [and shall  
20 ~~report gross revenue from Hawaii donors and national gross~~  
21 ~~revenue from a solicitation activity or campaign.]~~ who shall



1 certify that the statements therein are true and correct to the  
2 best of the solicitor's, officer's, or agent's knowledge subject  
3 to penalties imposed by section 710-1063. If a financial report  
4 required under this section is not filed in a timely manner,  
5 taking into account any extension of time for filing, unless it  
6 is shown that the failure is due to reasonable cause, an initial  
7 late filing fee of \$100 shall be imposed, and an additional late  
8 filing fee of \$20 per day shall be imposed, for each day during  
9 which the violation continues; provided that the total fee  
10 amount imposed under this subsection shall not exceed \$1,000.  
11 The attorney general may waive all or part of the late filing  
12 fee imposed by this subsection if there is a reasonable cause  
13 for the failure to timely file. The professional solicitor  
14 shall provide a copy of the financial report to the charitable  
15 organization to which the financial report pertains within ten  
16 days of its submission of the report to the attorney general. A  
17 professional solicitor shall maintain during each solicitation  
18 campaign and for not less than three years after the completion  
19 of that campaign the following records, which shall be available  
20 for inspection upon demand by 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-6.5, Hawaii Revised Statutes, is  
 12 amended to read as follows:

13 **"§467B-6.5 Annual financial reports; fiscal records and**  
 14 **fees.** (a) Every registered charitable organization shall  
 15 annually file with the department a report for its most recently  
 16 completed fiscal year. If the charitable organization files a  
 17 Form 990 [~~or~~], 990-EZ, or 990-PF with the Internal Revenue  
 18 Service, the annual report shall be a copy of that Form 990  
 19 [~~or~~], 990-EZ[-], or 990-PF. If the registered charitable  
 20 organization is required to file a Form 990-T with the Internal  
 21 Revenue Service, the annual report shall include a copy of that



1 Form 990-T. If a charitable organization is not required to  
2 file a Form 990 [~~or~~], 990-EZ, or 990-PF with the Internal  
3 Revenue Service, the annual report shall contain all information  
4 prescribed by the department. The annual report for a  
5 charitable organization that files a Form 990 [~~or~~], 990-EZ, or  
6 990-PF shall be electronically submitted to the department  
7 within ten business days of the date that the organization files  
8 the form with the Internal Revenue Service. The annual report  
9 for a charitable organization that files a Form 990-N or that is  
10 not required to file a Form 990 [~~or~~], 990-EZ, or 990-PF shall be  
11 electronically submitted to the department not later than the  
12 fifteenth day of the fifth month following the close of its  
13 fiscal year. An authorized officer or agent of the charitable  
14 organization shall sign the annual report and shall certify that  
15 the statements therein are true and correct to the best of the  
16 officer's or agent's knowledge subject to penalties imposed by  
17 section 710-1063. A charitable organization that has obtained  
18 an extension of time to file a Form 990 [~~or~~], 990-EZ, or 990-PF  
19 from the Internal Revenue Service shall provide a copy to the  
20 attorney general within twenty days after the copy is requested  
21 by the attorney general. [~~The annual report shall be~~



1 ~~accompanied by a filing fee as prescribed by subsection (d).]~~  
2 The department shall accept, under conditions prescribed by the  
3 attorney general, a copy or duplicate original of financial  
4 statements, reports, or returns filed by the charitable  
5 organization with the Internal Revenue Service or another state  
6 having requirements similar to the provisions of this section;  
7 provided that the attorney general may prescribe the form of the  
8 annual financial report for charitable organizations that file  
9 the Form 990-N with the Internal Revenue Service, or who are not  
10 required to file a Form 990 ~~[or]~~, 990-EZ, or 990-PF with the  
11 Internal Revenue Service.

12 (b) A charitable organization with contributions in excess  
13 of \$500,000 in the year covered by the annual financial report  
14 and a charitable organization required to obtain an audit report  
15 by a governmental authority or a third party shall include with  
16 its annual financial report, an audit report, prepared in  
17 accordance with generally accepted accounting principles, by a  
18 certified public accountant.

19 ~~[(c) The department, upon written request and for good~~  
20 ~~cause shown, may grant an extension of time, not to exceed three~~



1 ~~months, for the filing of the annual report required by this~~  
2 ~~section.~~

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

- 9 (1) \$0, if gross revenue is less than \$25,000;  
10 (2) \$25, if gross revenue is at least \$25,000 but less  
11 than \$50,000;  
12 (3) \$50, if gross revenue is at least \$50,000 but less  
13 than \$100,000;  
14 (4) \$100, if gross revenue is at least \$100,000 but less  
15 than \$250,000;  
16 (5) \$150, if gross revenue is at least \$250,000 but less  
17 than \$500,000;  
18 (6) \$200, if gross revenue is at least \$500,000 but less  
19 than \$1,000,000;  
20 (7) \$250, if gross revenue is at least \$1,000,000 but less  
21 than \$2,000,000;



1 (8) \$350, if gross revenue is at least \$2,000,000 but less  
2 than \$5,000,000; or

3 (9) \$600, if gross revenue is \$5,000,000 or more.

4 [~~e~~] (d) If a return, report, or filing fee required  
5 under this section is not filed or paid, taking into account any  
6 extension of time for filing, unless it is shown that the  
7 failure is due to reasonable cause, a late filing fee of \$20  
8 shall be imposed for each day during which the violation  
9 continues; provided that the total amount imposed under this  
10 subsection shall not exceed \$1,000.

11 [~~f~~] (e) Every charitable organization subject to section  
12 467B-2.1 and this section shall keep true fiscal records that  
13 shall be available to the department for inspection upon  
14 request. The organization shall retain the records for no less  
15 than three years after the end of the fiscal year to which they  
16 relate.

17 [~~g~~] (f) The attorney general may require the annual  
18 financial report and audit report required by subsections (a)  
19 and (b) to be electronically submitted and to include electronic  
20 signatures."



1 SECTION 6. Section 467B-11.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§467B-11.5 Charitable organizations exempted from  
4 registration and financial disclosure requirements. The  
5 following charitable organizations shall not be subject to  
6 sections 467B-2.1 and 467B-6.5, if the organization submits an  
7 application for an exemption to the department and the  
8 department approves the organization's application:

- 9 (1) Any duly organized religious corporation, institution,  
10 or society that is exempt from filing Form 990 with  
11 the Internal Revenue Service pursuant to ~~[sections~~  
12 ~~6033(a)(3)(A)(i) and (iii) and 6033(a)(3)(C)(i)]~~  
13 section 6033(a)(3)(A)(i) and (iii) and (C)(i) of the  
14 Internal Revenue Code, as amended;
- 15 (2) Parent-teacher associations;
- 16 (3) Any educational institution that is licensed or  
17 accredited by any of the following licensing or  
18 accrediting organizations[+] or their successor  
19 organizations:
- 20 (A) Hawaii Association of Independent Schools;
- 21 ~~[-(B) Hawaii Council of Private Schools;~~



- 1           ~~(C)~~   (B)   Western Association of Schools and Colleges;
- 2           ~~(D)~~   (C)   Middle States Association of Colleges and
- 3                               Schools;
- 4           ~~(E)~~   (D)   New England Association of Schools and
- 5                               Colleges;
- 6           ~~(F)~~   ~~North Central Association of Colleges and~~
- 7                               ~~Schools;~~ (E)   Higher Learning Commission;
- 8           ~~(G)~~   (F)   Northwest Commission on Colleges and
- 9                               Universities;
- 10          ~~(H)~~   (G)   Southern Association of Colleges and
- 11                               Schools;
- 12          ~~(I)~~   (H)   The National Association for the Education
- 13                               of Young Children; or
- 14          ~~(J)~~   ~~The Northwest Accreditation Commission for~~
- 15                               ~~Primary and Secondary Schools; and any]~~ (I)
- 16                               Advanced.
- 17          (4)   Any organization exempt from taxation under section
- 18                               501(c)(3) of the Internal Revenue Code expressly
- 19                               authorized by, and having an established identity
- 20                               with, an education institution accredited by one of
- 21                               the ~~foregoing~~ accrediting agencies~~]~~ as provided in



1           paragraph (3); provided that the organization's  
2           solicitation of contributions is primarily directed to  
3           the students, alumni, faculty, and trustees of the  
4           institutions and their respective families;  
5       ~~[(4)]~~ (5) Any nonprofit hospital licensed by the State or  
6           any similar provision of the laws of any other state;  
7       ~~[(5)]~~ (6) Any corporation established by an act of the  
8           United States Congress that is required by federal law  
9           to submit to Congress annual reports, fully audited by  
10          the United States Department of Defense, of its  
11          activities including itemized accounts of all receipts  
12          and expenditures;  
13       ~~[(6)]~~ (7) Any agency of this State, another state, or the  
14          federal government; and  
15       ~~[(7)]~~ (8) Any charitable organization that normally  
16          receives less than \$25,000 in contributions annually,  
17          if the organization does not employ or compensate a  
18          professional solicitor or professional fundraising  
19          counsel. For purposes of this paragraph, an  
20          organization normally receives less than \$25,000 in  
21          contributions annually if, during the immediately





1 preceding three fiscal years, it received, on average,  
2 less than \$25,000 in contributions.

3 The attorney general may require the application for exemption  
4 to be filed electronically with the department and may require  
5 the use of electronic signatures."

6 SECTION 7. This Act does not affect rights and duties that  
7 matured, penalties that were incurred, and proceedings that were  
8 begun before its effective date.

9 SECTION 8. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 9. This Act shall take effect upon approval;  
12 provided that compliance with this Act shall not be required  
13 until January 1, 2018.



**Report Title:**

Charitable Organizations

**Description:**

Defines "property" as used in section 28-5.2, Hawaii Revised Statutes, regarding protection of charitable assets. Requires certain disclosures on collection bins for donated clothing and household items by for-profit and nonprofit organizations, authorizes an officer or an agent to file an initial registration statement for a charity, requires notice to the Attorney General and specifies a procedure when a charity seeks deactivation from registration, authorizes the Attorney General to require electronic signature for financial reports filed by professional solicitors, clarifies what is being certified by the electronic signature and therefore subject to section 710-1063, Hawaii Revised Statutes, regarding penalties for unsworn statements shall apply, allows charitable organizations that file an IRS Form 990-PF to file annual reports with the Attorney General on the same schedule as charities that file an IRS Form 990 or 990EZ, repeals obsolete and updates references to accrediting organizations, and clarifies that the exemption from registration for organizations that support educational institutions is a separate exemption from that of the educational institutions themselves. (HB1028 HD1)

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

