
A BILL FOR AN ACT

RELATING TO CHARITABLE ORGANIZATIONS.

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

1 SECTION 1. Section 28-5.2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[+]~~ §28-5.2 ~~[+]~~ **Protection of charitable assets; attorney**
4 **general's authority.** (a) The attorney general shall represent
5 the public interest in the protection of charitable assets and
6 may:

7 (1) Enforce the application of a charitable asset in
8 accordance with:

9 (A) The law and terms governing the use, management,
10 investment, distribution, and expenditure of the
11 charitable asset; and

12 (B) The charitable purpose of the person holding the
13 asset;

14 (2) Act to prevent or remedy:

15 (A) The misapplication, diversion, or waste of a
16 charitable asset; or



- 1 (B) A breach of fiduciary or other legal duty in the
2 governance, management, or administration of a
3 charitable asset; or
- 4 (3) Commence or intervene in an action to:
- 5 (A) Prevent, remedy, or obtain damages for:
- 6 (i) The misapplication, diversion, or waste of a
7 charitable asset; or
- 8 (ii) A breach of fiduciary or other legal duty in
9 the governance, management, or
10 administration of a charitable asset; or
- 11 (B) Determine that an asset is a charitable asset.
- 12 (b) If the attorney general has reason to believe an
13 investigation is necessary to determine whether action is
14 advisable under this section, the attorney general may conduct
15 an investigation, including exercising administrative subpoena
16 power under sections 28-2.5 and 467B-9.3.
- 17 (c) This section shall not limit the powers and duties of
18 the attorney general under the laws of this State.
- 19 (d) As used in this section "charitable asset" means
20 property that is given, received, or held for a charitable



1 purpose. The term does not include property acquired or held
2 for a for-profit purpose.

3 (e) As used in this section, "property" includes all
4 interests in real property or tangible or intangible personal
5 property, including cash, remainder interests, land, and
6 conservation or preservation easements or restrictions. The
7 remainder interest in a charitable remainder trust is property
8 held for a charitable purpose, as is the current interest in a
9 charitable lead trust, property held for ten years in a building
10 fund, and property given to a charitable organization subject to
11 a restriction on its use. Property held in a revocable trust
12 that provides a remainder interest for a charitable purpose is
13 not a charitable asset while the settlor is alive because the
14 settlor can revoke or change the interest."

15 SECTION 2. Section 467B-2.1, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§467B-2.1 Registration of charitable organizations [-];**
18 **deactivation.** (a) Every public benefit corporation domiciled
19 in Hawaii and every charitable organization not exempted by
20 section 467B-11.5 shall register with the department prior to
21 conducting any solicitation of contributions or prior to having



1 any solicitation of contributions conducted on its behalf by
 2 others. ~~[Two]~~ An authorized ~~[officers]~~ officer or agent of the
 3 charitable organization shall sign the registration form and
 4 shall certify that the statements therein are true and correct
 5 to the best of ~~[their]~~ the officer's or agent's knowledge
 6 subject to penalties imposed by section 710-1063. A central or
 7 parent organization that has received a group exemption letter
 8 from the Internal Revenue Service may submit a consolidated
 9 application for registration for itself and any or all of the
 10 subordinate organizations covered under the group exemption that
 11 are included in the central or parent organization's annual
 12 information return to the Internal Revenue Service.

13 (b) Any charitable organization registered in Hawaii or
 14 any charitable organization exempted from registration pursuant
 15 to section 467B-11.5 that will no longer be conducting any
 16 solicitation of contributions or having any solicitation of
 17 contributions conducted on its behalf by others and that wishes
 18 to be deactivated shall file a request for deactivation with the
 19 attorney general in writing. The attorney general shall
 20 deactivate the organization after being satisfied that all
 21 obligations of the organization under this chapter have been



1 met. Deactivation of a charitable organization shall not
2 deprive the attorney general of jurisdiction over the activities
3 of the charitable organization that occurred while the
4 organization was registered or should have been registered.

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

8 [~~(e)~~] (d) The attorney general may require that
9 registration or deactivation forms be filed with the department
10 electronically and may require the use of electronic
11 signatures."

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

14 "(a) Within ninety days after a solicitation campaign or
15 event has been completed [~~and on~~] or within ninety days of the
16 anniversary of the commencement of a solicitation campaign
17 lasting more than one year, a professional solicitor shall file
18 with the attorney general a financial report for the campaign,
19 including gross revenue from Hawaii donors and national gross
20 revenue and an itemization of all expenses incurred on a form
21 prescribed by the attorney general. The attorney general may



1 require the financial report to be submitted electronically[~~-~~]
2 and may require the use of electronic signatures. This report
3 shall be signed [~~under penalty provided by section 710-1063~~] by
4 the professional solicitor or by an authorized [~~contracting~~]
5 officer or agent [~~for~~] of the professional solicitor [~~and shall~~
6 ~~report gross revenue from Hawaii donors and national gross~~
7 ~~revenue from a solicitation activity or campaign.~~] who shall
8 certify that the statements therein are true and correct to the
9 best of the solicitor's, officer's, or agent's knowledge subject
10 to penalties imposed by section 710-1063. If a financial report
11 required under this section is not filed in a timely manner,
12 taking into account any extension of time for filing, unless it
13 is shown that the failure is due to reasonable cause, an initial
14 late filing fee of \$100 shall be imposed, and an additional late
15 filing fee of \$20 per day shall be imposed, for each day during
16 which the violation continues; provided that the total fee
17 amount imposed under this subsection shall not exceed \$1,000.
18 The attorney general may waive all or part of the late filing
19 fee imposed by this subsection if there is a reasonable cause
20 for the failure to timely file. The professional solicitor
21 shall provide a copy of the financial report to the charitable



1 organization to which the financial report pertains within ten
2 days of its submission of the report to the attorney general. A
3 professional solicitor shall maintain during each solicitation
4 campaign and for not less than three years after the completion
5 of that campaign the following records, which shall be available
6 for inspection upon demand by the attorney general:

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

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

19 "**§467B-6.5 Annual financial reports; fiscal records and**
20 **fees.** (a) Every registered charitable organization shall
21 annually file with the department a report for its most recently



1 completed fiscal year. If the charitable organization files a
2 Form 990 [~~or~~], 990-EZ, or 990-PF with the Internal Revenue
3 Service, the annual report shall be a copy of that Form 990
4 [~~or~~], 990-EZ[-], or 990-PF. If the registered charitable
5 organization is required to file a Form 990-T with the Internal
6 Revenue Service, the annual report shall include a copy of that
7 Form 990-T. If a charitable organization is not required to
8 file a Form 990 [~~or~~], 990-EZ, or 990-PF with the Internal
9 Revenue Service, the annual report shall contain all information
10 prescribed by the department. The annual report for a
11 charitable organization that files a Form 990 [~~or~~], 990-EZ, or
12 990-PF shall be electronically submitted to the department
13 within ten business days of the date that the organization files
14 the form with the Internal Revenue Service. The annual report
15 for a charitable organization that files a Form 990-N or that is
16 not required to file a Form 990 [~~or~~], 990-EZ, or 990-PF shall be
17 electronically submitted to the department not later than the
18 fifteenth day of the fifth month following the close of its
19 fiscal year. An authorized officer or agent of the charitable
20 organization shall sign the annual report and shall certify that
21 the statements therein are true and correct to the best of the



1 officer's or agent's knowledge subject to penalties imposed by
2 section 710-1063. A charitable organization that has obtained
3 an extension of time to file a Form 990 [~~or~~], 990-EZ, or 990-PF
4 from the Internal Revenue Service shall provide a copy to the
5 attorney general within twenty days after the copy is requested
6 by the attorney general. [~~The annual report shall be~~
7 ~~accompanied by a filing fee as prescribed by subsection (d).~~]
8 The department shall accept, under conditions prescribed by the
9 attorney general, a copy or duplicate original of financial
10 statements, reports, or returns filed by the charitable
11 organization with the Internal Revenue Service or another state
12 having requirements similar to the provisions of this section;
13 provided that the attorney general may prescribe the form of the
14 annual financial report for charitable organizations that file
15 the Form 990-N with the Internal Revenue Service, or who are not
16 required to file a Form 990 [~~or~~], 990-EZ, or 990-PF with the
17 Internal Revenue Service.

18 (b) A charitable organization with contributions in excess
19 of \$500,000 in the year covered by the annual financial report
20 and a charitable organization required to obtain an audit report
21 by a governmental authority or a third party shall include with



1 its annual financial report, an audit report, prepared in
2 accordance with generally accepted accounting principles, by a
3 certified public accountant.

4 ~~[(c) The department, upon written request and for good~~
5 ~~cause shown, may grant an extension of time, not to exceed three~~
6 ~~months, for the filing of the annual report required by this~~
7 ~~section.~~

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

- 14 (1) \$0, if gross revenue is less than \$25,000;
- 15 (2) \$25, if gross revenue is at least \$25,000 but less
16 than \$50,000;
- 17 (3) \$50, if gross revenue is at least \$50,000 but less
18 than \$100,000;
- 19 (4) \$100, if gross revenue is at least \$100,000 but less
20 than \$250,000;



- 1 (5) \$150, if gross revenue is at least \$250,000 but less
2 than \$500,000;
- 3 (6) \$200, if gross revenue is at least \$500,000 but less
4 than \$1,000,000;
- 5 (7) \$250, if gross revenue is at least \$1,000,000 but less
6 than \$2,000,000;
- 7 (8) \$350, if gross revenue is at least \$2,000,000 but less
8 than \$5,000,000; or
- 9 (9) \$600, if gross revenue is \$5,000,000 or more.
- 10 [~~(e)~~] (d) If a return, report, or filing fee required
11 under this section is not filed or paid, taking into account any
12 extension of time for filing, unless it is shown that the
13 failure is due to reasonable cause, a late filing fee of \$20
14 shall be imposed for each day during which the violation
15 continues; provided that the total amount imposed under this
16 subsection shall not exceed \$1,000.
- 17 [~~(f)~~] (e) Every charitable organization subject to section
18 467B-2.1 and this section shall keep true fiscal records that
19 shall be available to the department for inspection upon
20 request. The organization shall retain the records for no less



1 than three years after the end of the fiscal year to which they
2 relate.

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

7 SECTION 5. Section 467B-11.5, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§467B-11.5 Charitable organizations exempted from**
10 **registration and financial disclosure requirements.** The
11 following charitable organizations shall not be subject to
12 sections 467B-2.1 and 467B-6.5, if the organization submits an
13 application for an exemption to the department and the
14 department approves the organization's application:

- 15 (1) Any duly organized religious corporation, institution,
16 or society that is exempt from filing Form 990 with
17 the Internal Revenue Service pursuant to ~~[sections~~
18 ~~6033(a)(3)(A)(i) and (iii) and 6033(a)(3)(C)(i)]~~
19 section 6033(a)(3)(A)(i) and (iii) and (C)(i) of the
20 Internal Revenue Code, as amended;
- 21 (2) Parent-teacher associations;



- 1 (3) Any educational institution that is licensed or
2 accredited by any of the following licensing or
3 accrediting organizations[+] or their successor
4 organizations:
- 5 (A) Hawaii Association of Independent Schools;
6 ~~[-(B)] Hawaii Council of Private Schools;~~
7 ~~[-(C)]~~ (B) Western Association of Schools and Colleges;
8 ~~[-(D)]~~ (C) Middle States Association of Colleges and
9 Schools;
10 ~~[-(E)]~~ (D) New England Association of Schools and
11 Colleges;
12 ~~[-(F)] North Central Association of Colleges and~~
13 ~~Schools;~~ (E) Higher Learning Commission;
14 ~~[-(G)]~~ (F) Northwest Commission on Colleges and
15 Universities;
16 ~~[-(H)]~~ (G) Southern Association of Colleges and
17 Schools;
18 ~~[-(I)]~~ (H) The National Association for the Education
19 of Young Children; or



1 ~~[(J)]~~ ~~The Northwest Accreditation Commission for~~
2 ~~Primary and Secondary Schools; and any]~~ (I)
3 Advanced;
4 (4) Any organization exempt from taxation under section
5 501(c)(3) of the Internal Revenue Code expressly
6 authorized by, and having an established identity
7 with, an education institution accredited by one of
8 the ~~[foregoing]~~ accrediting agencies~~[-]~~ as provided in
9 paragraph (3); provided that the organization's
10 solicitation of contributions is primarily directed to
11 the students, alumni, faculty, and trustees of the
12 institutions and their respective families;
13 ~~[(4)]~~ (5) Any nonprofit hospital licensed by the State or
14 any similar provision of the laws of any other state;
15 ~~[(5)]~~ (6) Any corporation established by an act of the
16 United States Congress that is required by federal law
17 to submit to Congress annual reports, fully audited by
18 the United States Department of Defense, of its
19 activities including itemized accounts of all receipts
20 and expenditures;



1 [~~6~~] (7) Any agency of this State, another state, or the
2 federal government; and
3 [~~7~~] (8) Any charitable organization that normally
4 receives less than \$25,000 in contributions annually,
5 if the 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. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 7. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.



1 SECTION 8. This Act shall take effect on July 1, 2050;
2 provided that sections 2 and 3 shall take effect on January 1,
3 2018.



Report Title:

Charitable Organizations; Attorney General; Reports; Enforcement

Description:

Clarifies the Attorney General's regulatory authority over charitable organizations and charitable assets. Establishes procedures for deactivation of an obsolete charitable organization. Clarifies requirements for financial reports for solicitation campaigns and charitable organizations' annual reports. Makes housekeeping amendments to exemptions from registration and reporting requirements. (HB1028 HD2)

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