

S.B. NO. 894

JAN 25 2017

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.

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

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1 organization, the front of the collection box shall also
2 conspicuously display a statement describing the charitable
3 cause that will benefit from the donations.

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

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

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

19 "[+]§28-5.2[+] **Protection of charitable assets; attorney**
20 **general's authority.** (a) The attorney general shall represent
21 the public interest in the protection of charitable assets and
22 may:

23 (1) Enforce the application of a charitable asset in

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- 1 accordance with:
- 2 (A) The law and terms governing the use, management,
- 3 investment, distribution, and expenditure of the
- 4 charitable asset; and
- 5 (B) The charitable purpose of the person holding the
- 6 asset;
- 7 (2) Act to prevent or remedy:
- 8 (A) The misapplication, diversion, or waste of a
- 9 charitable asset; or
- 10 (B) A breach of fiduciary or other legal duty in the
- 11 governance, management, or administration of a
- 12 charitable asset; or
- 13 (3) Commence or intervene in an action to:
- 14 (A) Prevent, remedy, or obtain damages for:
- 15 (i) The misapplication, diversion, or waste of a
- 16 charitable asset; or
- 17 (ii) A breach of fiduciary or other legal duty in
- 18 the governance, management, or
- 19 administration of a charitable asset; or
- 20 (B) Determine that an asset is a charitable asset.
- 21 (b) If the attorney general has reason to believe an
- 22 investigation is necessary to determine whether action is
- 23 advisable under this section, the attorney general may conduct

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1 an investigation, including exercising administrative subpoena
2 power under sections 28-2.5 and 467B-9.3.

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

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

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

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

23 **"§467B-2.1 Registration of charitable organizations[-];**

1 deactivation. (a) Every public benefit corporation domiciled
2 in Hawaii and every charitable organization not exempted by
3 section 467B-11.5 shall register with the department prior to
4 conducting any solicitation of contributions or prior to having
5 any solicitation of contributions conducted on its behalf by
6 others. [~~Two~~] An authorized [~~officers~~] officer or agent of the
7 charitable organization shall sign the registration form and
8 shall certify that the statements therein are true and correct
9 to the best of [~~their~~] the officer's or agent's knowledge
10 subject to penalties imposed by section 710-1063. A central or
11 parent organization that has received a group exemption letter
12 from the Internal Revenue Service may submit a consolidated
13 application for registration for itself and any or all of the
14 subordinate organizations covered under the group exemption that
15 are included in the central or parent organization's annual
16 information return to the Internal Revenue Service.

17 (b) Any charitable organization registered in Hawaii or
18 any charitable organization exempted from registration pursuant
19 to section 467B-11.5 that will no longer be conducting any
20 solicitation of contributions or having any solicitation of
21 contributions conducted on its behalf by others and that wishes
22 to be deactivated shall file a request for deactivation with the
23 attorney general in writing. The attorney general shall

1 deactivate the organization after being satisfied that all
2 obligations of the organization under this chapter have been
3 met. Deactivation of a charitable organization shall not
4 deprive the attorney general of jurisdiction over the activities
5 of the charitable organization that occurred while the
6 organization was registered or should have been registered.

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

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

14 SECTION 4. 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]~~ or within ninety days of the
18 anniversary of the commencement of a solicitation campaign
19 lasting more than one year, a professional solicitor shall file
20 with the attorney general a financial report for the campaign,
21 including gross revenue from Hawaii donors and national gross
22 revenue and an itemization of all expenses incurred on a form
23 prescribed by the attorney general. The attorney general may

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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 or officer's or agent's knowledge
10 subject to penalties imposed by section 710-1063. If a
11 financial report required under this section is not filed in a
12 timely manner, taking into account any extension of time for
13 filing, unless it is shown that the failure is due to reasonable
14 cause, an initial late filing fee of \$100 shall be imposed, and
15 an additional late filing fee of \$20 per day shall be imposed,
16 for each day during which the violation continues; provided that
17 the total fee amount imposed under this subsection shall not
18 exceed \$1,000. The attorney general may waive all or part of
19 the late filing fee imposed by this subsection if there is a
20 reasonable cause for the failure to timely file. The
21 professional solicitor shall provide a copy of the financial
22 report to the charitable organization to which the financial
23 report pertains within ten days of its submission of the report

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

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

16 SECTION 5. Section 467B-6.5, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§467B-6.5 Annual financial reports; fiscal records and**
19 **fees.** (a) Every registered charitable organization shall
20 annually file with the department a report for its most recently
21 completed fiscal year. If the charitable organization files a
22 Form 990 [~~0~~], 990-EZ, or 990-PF with the Internal Revenue
23 Service, the annual report shall be a copy of that Form 990

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

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

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

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

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

- 7 (1) \$0, if gross revenue is less than \$25,000;
8 (2) \$25, if gross revenue is at least \$25,000 but less
9 than \$50,000;
10 (3) \$50, if gross revenue is at least \$50,000 but less
11 than \$100,000;
12 (4) \$100, if gross revenue is at least \$100,000 but less
13 than \$250,000;
14 (5) \$150, if gross revenue is at least \$250,000 but less
15 than \$500,000;
16 (6) \$200, if gross revenue is at least \$500,000 but less
17 than \$1,000,000;
18 (7) \$250, if gross revenue is at least \$1,000,000 but less
19 than \$2,000,000;
20 (8) \$350, if gross revenue is at least \$2,000,000 but less
21 than \$5,000,000; or
22 (9) \$600, if gross revenue is \$5,000,000 or more.

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

8 [~~f~~] (e) Every charitable organization subject to section
9 467B-2.1 and this section shall keep true fiscal records that
10 shall be available to the department for inspection upon
11 request. The organization shall retain the records for no less
12 than three years after the end of the fiscal year to which they
13 relate.

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

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 an

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1 application for an exemption to the department and the
2 department approves the organization's application:

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)~~]
7 section 6033(a)(3)(A)(i) and (iii) and (C)(i) of the
8 Internal Revenue Code, as amended;

9 (2) Parent-teacher associations;

10 (3) Any educational institution that is licensed or
11 accredited by any of the following licensing or
12 accrediting organizations[+] or their successor
13 organizations:

14 (A) Hawaii Association of Independent Schools;

15 [~~(B)~~] ~~Hawaii Council of Private Schools;~~

16 [~~(C)~~] (B) Western Association of Schools and Colleges;

17 [~~(D)~~] (C) Middle States Association of Colleges and
18 Schools;

19 [~~(E)~~] (D) New England Association of Schools and
20 Colleges;

21 [~~(F)~~] ~~North Central Association of Colleges and~~
22 ~~Schools;~~ (E) Higher Learning Commission;

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1 the United States Department of Defense, of its
2 activities including itemized accounts of all receipts
3 and expenditures;

4 ~~[(6)]~~ (7) Any agency of this State, another state, or the
5 federal government; and

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

15 The attorney general may require the application for exemption
16 to be filed electronically with the department and may require
17 the use of electronic signatures."

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

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

21

22

INTRODUCED BY: 

23

BY REQUEST

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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.

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 ORGANIZATIONS.

PURPOSE: The purposes of this bill are to amend section 28-5.2, Hawaii Revised Statutes (HRS), to add a definition of "property" as used in that section regarding the protection of charitable assets, and to amend chapter 467B, HRS, to: (1) require conspicuous disclosures by for-profit businesses and charitable organizations on collection bins for household items, clothing, and other donated items, (2) authorize an officer or an agent to file an initial registration statement for a charity, (3) require notice to the Attorney General and specify a procedure when a charity seeks deactivation from registration, (4) authorize the Attorney General to require electronic signature for financial reports filed by professional solicitors, clarify what is being certified by the electronic signature and therefore subject to section 710-1063, HRS, regarding penalties for unsworn statements, (5) allow 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 Form 990-EZ, (6) delete obsolete and update references to accrediting agencies, and (7) clarify that there are separate exemption categories for educational institutions and entities that support educational institutions.

MEANS: Add a new section to chapter 467B and amend sections 28-5.2, 467B-2.1, 467B-2.5(a), 467B-6.5, and 467B-11.5, HRS.

JUSTIFICATION: The new section to chapter 467B, HRS, would create new disclosure requirements at collection bins operated by both for-profit and charitable organizations for consumer and donor protection purposes. Section 28-5.2, HRS, provides that the Attorney General has authority to protect charitable assets; the

definition of charitable assets refers to property and this amendment further defines property that would constitute charitable assets. The amendments to chapter 467B will facilitate electronic submission of documents by allowing authorized agents to file registration and financial reports on behalf of their client charities and professional solicitors, will clarify what charities must do to deactivate a registration, will allow registered private foundations to file annual reports with the Attorney General on the same schedule as registered public charities, remove an obsolete reference to an accrediting institution, and clarify that there are separate exemption categories for educational institutions and entities that support educational institutions.

Impact on the public: The disclosure requirement for collection bins provides greater donor protections and greater clarity for organizations soliciting contributions through collection bins.

Impact on the department and other agencies: This bill will facilitate the Attorney General's transitioning to electronic registration systems and clarify exemption categories.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	ATG 100.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	Upon approval.