
A BILL FOR AN ACT

RELATING TO SOLICITATION OF FUNDS FROM THE PUBLIC.

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- Charitable fundraising platforms; platform
5 charities; emergency periods. (a) During an emergency period,
6 a charitable fundraising platform that is a trustee for
7 charitable purposes shall be subject to the department's
8 supervision for activities regulated by this section. Before
9 soliciting, permitting, or otherwise enabling solicitations for
10 purported charitable purposes for an affected area during an
11 emergency period, a charitable fundraising platform shall
12 register with the department on a form provided by the
13 department. Persons or entities that meet the definition of a
14 charitable fundraising platform and platform charity shall
15 register as charitable fundraising platforms before conducting
16 activities regulated by this section. Registrations under this
17 section shall expire after one year and shall be subject to a



1 registration and renewal fee imposed by the department. Fee
2 revenues from this section shall be deposited into the
3 solicitation of funds for charitable purposes special fund.

4 (b) During an emergency period, a platform charity that is
5 a trustee for charitable purposes shall be subject to the
6 department's supervision. The platform charity shall register
7 with the department as a platform charity before conducting
8 activities regulated by this section. If a platform charity
9 engages the services of a charitable fundraising platform for
10 purported charitable solicitations for an affected area during
11 an emergency period, the platform charity shall promptly notify
12 the department of the engagement, unless previously specified
13 through the registration of the platform charity or charitable
14 fundraising platform.

15 (c) Each charitable fundraising platform and platform
16 charity shall file periodic reports with the department on a
17 form provided by the department. A report shall be filed each
18 month during an emergency period; provided that a final report
19 shall be filed within thirty days after the end of the emergency
20 period. Each report shall:



- 1 (1) Enable the department to ascertain whether charitable
2 funds have been properly solicited, received, held,
3 controlled, or distributed;
- 4 (2) Provide information on the number of donations made,
5 the amounts raised, the length of time for
6 distributing donations or grants of recommended
7 donations, the fees charged by or through a charitable
8 fundraising platform or platform charity, and
9 information on recipient charitable organizations or
10 other charitable organizations that were sent or were
11 not sent donations or grants of recommended donations;
12 and
- 13 (3) Not include the disclosure of personally identifiable
14 information of donors or other persons using a
15 charitable fundraising platform.
- 16 (d) A platform charity shall not facilitate acts of
17 solicitation on a charitable fundraising platform during an
18 emergency period unless the platform charity is in good
19 standing.
- 20 (e) During an emergency period, a charitable fundraising
21 platform or platform charity shall only solicit, permit, or



1 otherwise enable solicitations, or receive, control, or
2 distribute funds from donations for purported charitable
3 purposes for an affected area for recipient charitable
4 organizations or other charitable organizations in good
5 standing. To determine good standing of recipient charitable
6 organizations or other charitable organizations, a charitable
7 fundraising platform or platform charity may rely on electronic
8 lists periodically published by the Internal Revenue Service,
9 the department of taxation, or the department; provided that if
10 none of the foregoing agencies publishes a list, then the
11 charitable fundraising platform or platform charity shall not be
12 required to comply with this section for the length of time that
13 lists are unavailable.

14 (f) During an emergency period, and with respect to
15 purported charitable purposes for an affected area, a charitable
16 fundraising platform or platform charity that performs, permits,
17 or otherwise enables tier 1, tier 2, or tier 3 activities shall,
18 before a person can complete a donation or select or change a
19 recipient charitable organization, provide conspicuous
20 disclosures that prevent a likelihood of deception, confusion,
21 or misunderstanding, including:



- 1 (1) A statement that donations are made to the charitable
2 fundraising platform, the platform charity, the
3 recipient charitable organization, or the person
4 engaging in peer-to-peer charitable fundraising,
5 whichever is applicable;
- 6 (2) A statement that a recipient charitable organization
7 may not receive donations or grants or recommended
8 donations, with an explanation identifying the most
9 pertinent reasons under which a recipient charitable
10 organization may not receive the funds; provided that
11 the explanation as to the maximum length of time may
12 be provided through a conspicuous hyperlink, so long
13 as the disclosure is conspicuous when the hyperlink is
14 selected; provided further that this paragraph shall
15 not apply when there are no circumstances under which
16 a recipient charitable organization may not receive
17 the funds;
- 18 (3) The maximum length of time it takes to send the
19 donation or a grant of the recommended donation to a
20 recipient charitable organization with an explanation
21 as to the length of time, unless the donation is sent



1 contemporaneously to a recipient charitable
2 organization after the donation is made; provided that
3 the explanation as to the maximum length of time may
4 be provided through a conspicuous hyperlink, so long
5 as the disclosure is conspicuous when the hyperlink is
6 selected;

7 (4) The fees or other amounts, if any, deducted from or
8 added to the donation or a grant of the recommended
9 donation that are charged or retained by the
10 charitable fundraising platform, platform charity, or
11 any other partnering vendor, other than digital
12 payment processing fees; provided that this paragraph
13 shall not apply to tier 3 activities when no fees or
14 amounts are deducted or added; and

15 (5) A statement as to the tax deductibility of the
16 donation; provided that this paragraph shall not apply
17 to tier 3 activities.

18 (g) A charitable fundraising platform or platform charity
19 that solicits, permits, or otherwise enables solicitations
20 during an emergency period shall obtain the written consent of a
21 recipient charitable organization before using its name in a



1 solicitation for a purported charitable purpose for an affected
2 area. Written consent shall be provided directly to the
3 charitable fundraising platform or platform charity, or may be
4 provided to a charitable fundraising platform or platform
5 charity and apply to any affiliated charitable fundraising
6 platforms expressly identified in an agreement providing
7 consent, by one authorized officer, director, trustee, or other
8 duly authorized representative of the recipient charitable
9 organization. Written consent shall not be required for tier 1,
10 tier 2, or tier 3 activities, if the charitable fundraising
11 platform or platform charity:

12 (1) Only references the recipient charitable
13 organization's name, address, telephone number,
14 internet website, including through a hyperlink,
15 employer identification number, corporation or
16 organization number, or registration number with the
17 department, classification in the National Taxonomy of
18 Exempt Entities system, publicly available information
19 from the recipient charitable organization's tax or
20 information returns filed with the Internal Revenue
21 Service, publicly available information from the



1 recipient charitable organization's reports filed with
2 the department, or other information set forth in
3 rules adopted pursuant to chapter 91;

4 (2) Conspicuously discloses, before persons can complete a
5 donation or select or change a recipient charitable
6 organization, that the recipient charitable
7 organization has not provided consent or permission
8 for the solicitation, and has not reviewed or approved
9 the content generated by persons engaging in
10 peer-to-peer charitable fundraising, when applicable;

11 (3) Removes any recipient charitable organization from its
12 list or any solicitation regarding the recipient
13 charitable organization upon written request by the
14 recipient charitable organization, and verification
15 that the request is legitimate; provided that requests
16 shall be promptly verified and shall take no longer
17 than three business days for removal to occur after
18 verification is completed;

19 (4) Does not require that a recipient charitable
20 organization consent to any solicitations as a



1 condition for accepting a donation or grant of a
2 recommended donation; and

3 (5) Is compliant with all applicable provisions of this
4 chapter and rules adopted pursuant to chapter 91.

5 (h) After donors contribute donations based on tier 1 or
6 tier 2 activities during an emergency period, and with respect
7 to purported charitable purposes for an affected area, the
8 charitable fundraising platform or platform charity shall
9 promptly provide a tax donation receipt in a format determined
10 by the department.

11 (i) The charitable fundraising platform or platform
12 charity shall not divert or otherwise misuse the donations for
13 purported charitable purposes for an affected area that the
14 charitable fundraising platform or platform charity receives
15 during an emergency period through solicitation on the
16 charitable fundraising platform, and shall hold them in a
17 separate account or accounts from other funds belonging to the
18 charitable fundraising platform or platform charity. The
19 charitable fundraising platform or platform charity shall
20 promptly ensure donations and grants of recommended donations
21 are sent to recipient charitable organizations with an



1 accounting of any fees imposed for processing the funds, and in
2 accordance with any rules adopted pursuant to chapter 91. A
3 platform charity shall be vicariously liable for a charitable
4 fundraising platform's misuse of funds, and vice versa.

5 (j) If a charitable fundraising platform or platform
6 charity enters into any contracts with a vendor to solicit,
7 receive, control, process, distribute, and otherwise account for
8 donations on the charitable fundraising platform, and the
9 contract is in effect during any portion of an emergency period,
10 the contract shall be available for inspection by the
11 department.

12 (k) Notwithstanding any provision of this section or any
13 other law to the contrary, any national disaster charitable
14 organization shall be exempt from this section.

15 (l) As used in this section:

16 "Affected area" means the State, or any portion thereof,
17 that is the subject of a declared federal disaster.

18 "Charitable fundraising platform" means any person that
19 uses the Internet to provide an internet website, service, or
20 other platform to persons in the State, and performs, permits,



- 1 or otherwise enables acts of solicitation to occur, which
2 includes the following and any similar activity:
- 3 (1) Tier 1 activity;
 - 4 (2) Tier 2 activity;
 - 5 (3) Tier 3 activity;
 - 6 (4) Listing or referencing by name one or more recipient
7 charitable organizations to receive donations or
8 grants of recommended donations made by the platform
9 based on purchases made or other activity performed by
10 persons who use the platform; and
 - 11 (5) Providing to charitable organizations a customizable
12 internet-based website, software as a service, or
13 other platform that allows charitable organizations to
14 solicit or receive donations on or through the
15 platform, including through peer-to-peer charitable
16 fundraising; provided that the customizable platform
17 provided by the charitable fundraising platform does
18 not include the charitable organization's own
19 platform, but may integrate with the charitable
20 organization's platform.
- 21 "Charitable fundraising platform" does not include:



- 1 (1) A charitable organization's own platform that solicits
2 donations only for itself;
- 3 (2) A vendor that solely provides technical or supportive
4 services to a charitable fundraising platform so that
5 the charitable fundraising platform can function and
6 operate, including vendors used for hosting or domain
7 services, security certificates, internet access,
8 internet application development, or digital payment
9 processing. If that vendor also performs, permits, or
10 otherwise enables acts of solicitation described by
11 paragraph (1) on its own platform to persons in the
12 State, it is a charitable fundraising platform for its
13 own platform;
- 14 (3) A sponsoring organization of donor advised funds that
15 solicits donors to open donor advised fund accounts or
16 similar accounts, receives recommendations from donors
17 on charitable organizations that may receive grants of
18 funds previously contributed to the sponsoring
19 organization for a donor's donor advised fund account,
20 and the sponsoring organization does not list or
21 reference by name one or more recipient charitable



1 organizations for solicitation purposes on its
2 platform for persons who do not have advisory
3 privileges with respect to the granting of funds in a
4 donor advised fund of the sponsoring organization; or

5 (4) A person or entity that meets the definition of both a
6 commercial fundraiser for charitable purposes and a
7 charitable fundraising platform is only a commercial
8 fundraiser for charitable purposes when the person or
9 entity for compensation performs any of the following
10 acts of solicitation:

11 (A) Direct mail solicitation, excluding electronic
12 mail or messages;

13 (B) Estate gift or estate planning solicitation;

14 (C) In-person solicitation through a fundraising
15 event, door-to-door or other public spaces, or a
16 vending machine or similar equipment that does
17 not use a person to perform the solicitation;

18 (D) Noncash solicitation;

19 (E) Nonincidental acts of solicitation that are not
20 internet based, including solicitation through
21 print, radio, or television;



1 (F) Solicitation involving receiving something of
2 value, or a chance to win something of value, in
3 connection with a donation; or

4 (G) Telephone solicitation.

5 "Donor advised fund" shall have the same meaning as in
6 section 4966(d)(2) of the Internal Revenue Code of 1986, as
7 amended.

8 "Emergency period" means any period during which a declared
9 federal disaster is in effect.

10 "Good standing" means that a platform charity, recipient
11 charitable organization, or other charitable organization's
12 tax-exempt status has not been revoked by the Internal Revenue
13 Service or is not prohibited from soliciting or operating in the
14 state by the department.

15 "National disaster charitable organization" means the
16 American Red Cross or United Way.

17 "Peer-to-peer charitable fundraising" means a solicitation
18 campaign created by a person to support a recipient charitable
19 organization, through or with other assistance provided by a
20 charitable fundraising platform or platform charity.



1 "Platform charity" means a charitable organization that
2 facilitates acts of solicitation on a charitable fundraising
3 platform, which includes either of the following and any similar
4 activity:

5 (1) Solicits donations through a charitable fundraising
6 platform for itself from donors who use the charitable
7 fundraising platform with the implied or express
8 representation that the platform charity may grant
9 donations to recipient charitable organizations; or

10 (2) Grants funds to recipient charitable organizations
11 based on purchases made or other activity performed by
12 persons who use a charitable fundraising platform.

13 "Platform charity" does not include a sponsoring
14 organization of donor advised funds that solicits donors to open
15 donor advised fund accounts or similar accounts, receives
16 recommendations from donors on charitable organizations that may
17 receive grants of funds previously contributed to the sponsoring
18 organization for a donor's donor advised fund account, and the
19 sponsoring organization does not list or reference by name one
20 or more recipient charitable organizations for solicitation
21 purposes on its platform for persons who do not have advisory



1 privileges with respect to the granting of funds in a donor
2 advised fund of the sponsoring organization.

3 "Recipient charitable organization" means a charitable
4 organization that is listed or referenced by name on a
5 charitable fundraising platform or by a platform charity for
6 solicitation purposes.

7 "Tier 1 activity" means listing or referencing by name one
8 or more recipient charitable organizations to receive donations
9 or grants of recommended donations made by donors who use a
10 charitable fundraising platform.

11 "Tier 2 activity" means permitting persons who use a
12 charitable fundraising platform to solicit donations for or
13 recommend donations to be granted to one or more recipient
14 charitable organizations through peer-to-peer charitable
15 fundraising.

16 "Tier 3 activity" means persons who use a charitable
17 fundraising platform to select one or more recipient charitable
18 organizations to receive donations or grants of recommended
19 donations made by the platform, platform charity, or other
20 third-party person, based on purchases made or other activity
21 performed by persons who use the platform.



1 "Trustee" means any person accepting or holding property or
2 moneys on behalf of another person."

3 SECTION 2. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 3. New statutory material is underscored.

7 SECTION 4. This Act shall take effect on January 1, 2042.



Report Title:

Disasters; Donations; Solicitations; Platforms; Registration

Description:

Regulates charitable fundraising platforms and activities of platform charities during declared federal disasters. Includes provisions relating to the misuse of funds. Imposes vicarious liability upon a platform charity for a charitable fundraising platform's misuse of funds, and vice versa. Exempts national disaster charitable organizations from its provisions. Takes effect 1/1/2042. (SD2)

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

