

ACT 168

S.B. NO. 2248

A Bill for an Act Relating to Solicitation of Funds for Charitable Purposes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 467B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§467B- Professional solicitors; required disclosures. A professional solicitor who makes an oral solicitation by telephone, door-to-door, or otherwise shall furnish to each contributor, prior to collecting or attempting to collect any contribution, a written confirmation of the expected contribution, containing the following information clearly and conspicuously:

- (1) The full legal name, address, and telephone number of the individual professional solicitor who directly communicated with the contributor; and
- (2) A disclosure that the contribution is not tax-deductible, if applicable, or, if the professional solicitor maintains that the contribution is tax-deductible in whole or in part, the portion of the contribution that the professional solicitor maintains is tax-deductible.”

SECTION 2. Section 467B-1, Hawaii Revised Statutes, is amended by amending the definitions of “contribution”, “professional fund-raising counsel” or “professional fundraising counsel”, and “professional solicitor” to read as follows:

““Contribution” means the promise or grant of any money or property of any kind or value, including the promise to pay, except payments by members of a charitable organization for membership fees, dues, fines, or assessments, or for services rendered to individual members, if membership in the charitable organization confers a bona fide right, privilege, professional standing, honor, or other direct benefit, other than the right to vote, elect officers, or hold offices, and except money or property received from any governmental authority[-], or a grant or subsidy from any organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

“Professional fund-raising counsel” or “professional fundraising counsel” means any person who, for ~~[a fee,] compensation,~~ plans, conducts, manages, ~~[carries on,] advises, consults, or [acts as a consultant, whether directly or indirectly, in connection with soliciting]~~ prepares material for, or with respect to, the solicitation of contributions in this state for [or on behalf of any] a charitable organization, but who actually solicits no contributions as a part of the person’s services[-], and who does not employ, procure, or engage any compensated person to solicit contributions. The term ~~[includes]~~ shall not include a bona fide volunteer, salaried officer, or employee of a charitable organization ~~[if the bona fide volunteer, salaried officer, or employee of the charitable organization receives percentage compensation].~~

“Professional solicitor” means any person who, for a financial or other consideration, solicits contributions in this state for [or on behalf of] a charitable organization[-], or any person with whom the professional solicitor independently contracts to solicit for contributions. A person who is otherwise a professional fundraising counsel shall be deemed a professional solicitor if the person’s compensation is related to the amount of contributions received. The term does not include a bona fide volunteer. The term includes a ~~[bona fide volunteer,] salaried officer[-] or employee of a charitable organization if the [bona fide volunteer,] salaried officer[-] or employee of the charitable organization receives percentage compensation.~~ The

term does not include an attorney, investment counselor or advisor, financial advisor, or banker, or other person who:

- (1) Advises another person to make a contribution to a charitable organization as part of the person's employment; and
- (2) Does not receive compensation from the charitable organization for that advice."

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

"(a) Within ninety days after a solicitation campaign or event has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, a professional solicitor shall file with the attorney general a financial report for the campaign, including gross revenue and an itemization of all expenses incurred. This report shall be signed ~~[and sworn to]~~ under penalty provided by section 710-1063 by the authorized contracting agent for the professional solicitor and two authorized officials of the charitable organization. A professional solicitor shall maintain during each solicitation campaign and for not less than three years after the completion of that campaign the following records, which shall be available for inspection upon demand by the attorney general:

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

SECTION 4. Section 467B-9.7, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) The attorney general may refuse to register, may revoke, or may suspend the registration of any charitable organization, professional fundraising counsel, or professional solicitor whenever the attorney general finds that a charitable organization, professional fundraising counsel, or professional solicitor, or an agent, servant, or employee thereof:

- (1) Has violated or is operating in violation of ~~[any provision of]~~ this chapter, the rules of the attorney general, or an order issued by the attorney general;
- (2) Has refused or failed, after notice, to produce any records of the organization or to disclose any information required to be disclosed under this chapter or the rules of the attorney general; ~~[or]~~
- (3) Has made a material false statement in an application, statement, or report required to be filed under this chapter~~[-];~~ or
- (4) Has failed to file the financial report required by section 467B-2.5, or filed an incomplete financial report."

2. By amending subsection (c) to read:

"(c) ~~[All actions of the attorney general shall be taken subject to the right of notice, hearing, and adjudication and the right of appeal therefrom in accordance with chapter 91.]~~ Any person aggrieved by an action of the attorney general under this section may request a hearing to review that action in accordance with chapter

91 and rules adopted by the attorney general. Any request for hearing shall be made within ten days after the attorney general has served the person with notice of the action, which notice shall be deemed effective upon mailing.”

SECTION 5. Section 467B-12, Hawaii Revised Statutes, is amended to read as follows:

“§467B-12 Filing requirements for professional fundraising counsel and professional solicitors. (a) Every professional fundraising counsel or professional solicitor, prior to any solicitation, shall ~~file a registration statement~~ register with the department. The registration statement shall be ~~[in writing under oath or affirmation]~~ in the form prescribed by the attorney general and shall contain the information as the attorney general may require. The registration statement shall be accompanied by a fee in the amount of \$250, or in the amount and with any additional sums as may be prescribed by the attorney general. The statement shall list the names~~;~~ and addresses~~;~~ and social security numbers of all owners, officers, ~~[agents, servants, employees;]~~ and directors~~;~~ and independent contractors of a professional fundraising counsel, and the names~~;~~ and addresses~~;~~ and social security numbers of all owners, officers, ~~[agents, servants, employees;]~~ and directors~~;~~ and independent contractors of a professional solicitor. Renewal statements shall be filed with the department on or before July 1 of each calendar year ~~[in which the]~~ by each professional fundraising counsel or professional solicitor ~~[does business in or from the State]~~ and shall be effective until June 30 of the next calendar year. The renewal statement shall be in a form prescribed by the attorney general. A renewal fee of \$250, or in any amount and with any additional sums as may be prescribed by the attorney general, shall accompany the renewal statement.

(b) The professional fundraising counsel or professional solicitor, at the time of each filing, shall file with and have approved by the attorney general a bond in which the applicant is the principal obligor in the penal sum of \$25,000 issued with good and sufficient surety or sureties approved by the attorney general and which shall remain in effect for one year. The bond shall inure to the benefit of the State, conditioned that the applicant, its officers, directors, employees, agents, servants, and independent contractors shall not violate this chapter. A partnership or corporation that is a professional fundraising counsel or professional solicitor may file a consolidated bond on behalf of all its members, officers, and employees.

(c) The attorney general shall examine each registration statement and supporting document filed by a professional fundraising counsel or professional solicitor and shall determine whether the registration requirements are satisfied. If the attorney general determines that the registration requirements are not satisfied, the attorney general shall notify the professional fundraising counsel or professional solicitor in writing within fifteen business days of its receipt of the registration statement; otherwise the registration statement is deemed to be approved. Within seven business days after receipt of a notification that the registration requirements are not satisfied, the professional fundraising counsel or professional solicitor may request a hearing.

(d) The attorney general may adopt rules to provide for:

- (1) The extension of filing deadlines;
- (2) The online availability of forms required to be filed;
- (3) The electronic filing of required registration statements, contracts, forms, and reports; and
- (4) The acceptance of electronic signatures.”

SECTION 6. Section 467B-12.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be a written contract between a charitable organization and a professional fundraising counsel or professional solicitor that shall be filed by the professional fundraising counsel or professional solicitor with the attorney general at least ten business days prior to the performance by the professional fundraising counsel or professional solicitor of any service. No solicitation or service pursuant to the contract shall begin before the contract is filed with the attorney general. The contract shall be signed by two authorized officials of the charitable organization, one of whom shall be a member of the organization’s governing body, and the authorized contracting officer for the professional fundraising counsel or professional solicitor. The contract shall contain all of the following provisions:

- (1) The legal name and address of the charitable organization;
- (2) A statement of the charitable purpose for which the solicitation campaign is being conducted;
- (3) A statement of the respective obligations of the professional fundraising counsel or professional solicitor and the charitable organization;
- (4) A statement of the guaranteed minimum percentage of the gross receipts from contributions that will be remitted to or retained by the charitable organization, if any, or, if the solicitation involves the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price that will be remitted to the charitable organization, if any. The stated percentage shall exclude any amount that the charitable organization is to pay as fundraising costs;
- (5) Information concerning the compensation of the professional solicitor and fundraising counsel as follows:
 - (A) If the compensation of the professional fundraising counsel or professional solicitor is contingent upon the number of contributions or the amount of revenue received, a statement shall be included specifying the percentage of the gross revenue that is the basis for that compensation. The stated percentage shall include any amount that the professional fundraising counsel or professional solicitor is to be reimbursed for fundraising costs;
 - (B) If the compensation of the professional solicitor is not contingent upon the number of contributions or amount of revenue received from the solicitation campaign, the compensation shall be expressed as a reasonable estimate of the percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. The stated assumptions shall be based upon all of the relevant facts known to the professional solicitor regarding the solicitation to be conducted by the professional solicitor; or
 - (C) If the compensation of the fundraising counsel is not contingent on the number of contributions or amount of revenue received from the solicitation campaign, the compensation shall be stated in a dollar amount;
- (6) The effective and termination dates of the contract or, if the contract does not have a set termination date, a clause allowing either party a reasonable period to terminate the contract or notify the other party if either party chooses not to renew. The contract shall also contain the date services will commence with respect to solicitation in this State of contributions for a charitable organization;
- (7) [A] In the case of a professional fundraising counsel, a statement that the professional fundraising counsel [~~or professional solicitor~~] will not at any time have custody or control of contributions;

- (8) A statement that the charitable organization exercises control and approval over the content and volume of any solicitation; and
- (9) Any other information required by the rules of the attorney general.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect upon approval.

(Approved June 5, 2006.)

Note

- 1. Edited pursuant to HRS §23G-16.5.