

## ACT 205

S.B. NO. 2983

A Bill for an Act Relating to Solicitation of Funds from the Public.

*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- Charitable fundraising platforms; platform charities.** (a) Each charitable fundraising platform shall be subject to the department’s supervision for activities regulated by this section. Before soliciting, permitting, or otherwise enabling any solicitations for purported charitable purposes, a charitable fundraising platform shall register with the department on a form provided by the department. Registrations under this section shall be subject to an annual report and an annual renewal fee imposed by the department. Fee revenues from this section shall be deposited into the solicitation of funds for charitable purposes special fund.

(b) A platform charity shall be subject to the department’s supervision. The platform charity shall register with the department as a platform charity before conducting activities regulated by this section.

(c) Each charitable fundraising platform and platform charity shall file periodic reports with the department on a form provided by the department. Reports shall be filed pursuant to section 467B-12. Each report shall:

- (1) Enable the department to ascertain whether charitable funds have been properly solicited, received, held, controlled, or distributed;
- (2) Provide information on the number of donations made, amount raised, length of time for distributing donations or grants of recommended donations, fees charged by or through a charitable fundraising platform or platform charity, and names of recipient charitable organizations or other charitable organizations that were

sent or have not yet been sent donations or grants of recommended donations; and

- (3) Protect from disclosure any personally identifiable information of donors or other users of the charitable fundraising platform.
- (d) No platform charity shall facilitate acts of solicitation on a charitable fundraising platform unless the platform charity is in good standing.
- (e) A charitable fundraising platform or platform charity shall only solicit, permit, or otherwise enable solicitations, or receive, control, or distribute funds from donations for purported charitable purposes for recipient charitable organizations or other charitable organizations in good standing. To determine good standing of a recipient charitable organization or other charitable organization, a charitable fundraising platform or platform charity may rely on electronic lists periodically published by the Internal Revenue Service, department of taxation, or department.
- (f) With respect to purported charitable purposes, a charitable fundraising platform or platform charity that performs, permits, or otherwise enables solicitation activities shall, before a person can complete a donation or select or change a recipient charitable organization, provide conspicuous disclosures that reduce the likelihood of deception, confusion, or misunderstanding, including:
  - (1) A statement that donations are made to the charitable fundraising platform, platform charity, recipient charitable organization, or person engaging in peer-to-peer charitable fundraising, whichever is applicable;
  - (2) A statement that a recipient charitable organization may not receive donations or grants or recommended donations, with an explanation identifying the most pertinent reasons under which a recipient charitable organization may not receive the funds; provided that the explanation as to the maximum length of time may be provided through a conspicuous hyperlink, so long as the disclosure is conspicuous when the hyperlink is selected; provided further that this paragraph shall not apply when there are no circumstances under which a recipient charitable organization may not receive the funds;
  - (3) The maximum length of time it will take to send the donation or a grant of the recommended donation to a recipient charitable organization with an explanation of the time needed, unless the donation is sent contemporaneously to a recipient charitable organization after the donation is made; provided that the explanation as to the maximum length of time may be provided through a conspicuous hyperlink, so long as the disclosure is conspicuous when the hyperlink is selected;
  - (4) The fees or any other amounts that will be deducted from or added to the donation or a grant of the recommended donation and that are charged or retained by the charitable fundraising platform, platform charity, or any other partnering vendor, other than any applicable digital payment processing fees; and
  - (5) A statement as to the tax deductibility of the donation.
- (g) Each charitable fundraising platform or platform charity that solicits, permits, or otherwise enables solicitations shall obtain the written consent of a recipient charitable organization before using the recipient charitable organization's name in a solicitation for a purported charitable purpose. Written consent shall be provided directly to the charitable fundraising platform or platform charity, or may be provided to a charitable fundraising platform or platform charity by one authorized officer, director, trustee, or other duly authorized representative of the recipient charitable organization and may apply to multiple

affiliated charitable fundraising platforms expressly identified in the agreement providing consent.

(h) After a donor contributes donations and with respect to purported charitable purposes, the charitable fundraising platform or platform charity shall promptly provide a tax donation receipt to the donor in a format determined by the department.

(i) The charitable fundraising platform or platform charity shall not divert or otherwise misuse any donations made for purported charitable purposes that the charitable fundraising platform or platform charity receives through solicitation on the charitable fundraising platform, and shall hold the donations in a separate account or accounts from other funds belonging to the charitable fundraising platform or platform charity. The charitable fundraising platform or platform charity shall promptly ensure that donations and grants of recommended donations are sent to the recipient charitable organizations with an accounting of any fees assessed for processing the funds, and in accordance with any rules adopted by the department pursuant to chapter 91. A platform charity shall be vicariously liable for a charitable fundraising platform's misuse of funds, and vice versa.

(j) If a charitable fundraising platform or platform charity enters into any contract with a vendor to solicit, receive, control, process, distribute, and otherwise account for donations on the charitable fundraising platform, the contract shall be available for inspection by the department.

(k) As used in this section, "good standing" means that a platform charity, recipient charitable organization, or other charitable organization's tax-exempt status has not been revoked by the Internal Revenue Service or is not prohibited from soliciting or operating in the state by the department."

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

1. By adding five new definitions to be appropriately inserted and to read:

"Charitable fundraising platform" means any person that uses the Internet to provide an internet website, service, or other platform to persons in the State, and performs, permits, or otherwise enables acts of solicitation to occur, which includes the following and any similar activity:

- (1) Listing or referencing by name one or more recipient charitable organizations to receive donations or grants of recommended donations made by the platform based on purchases made or other activity performed by persons who use the platform; and
- (2) Providing to charitable organizations a customizable internet-based website, software as a service, or other platform that allows charitable organizations to solicit or receive donations on or through the platform, including through peer-to-peer charitable fundraising; provided that the customizable platform provided by the charitable fundraising platform does not include the charitable organization's own platform, but may integrate with the charitable organization's platform.

"Charitable fundraising platform" does not include:

- (1) A charitable organization's own platform that solicits donations only for itself;
- (2) A vendor that solely provides technical or supportive services to a charitable fundraising platform so that the charitable fundraising platform can function and operate, including vendors used for hosting or domain services, security certificates, internet access, internet

application development, or digital payment processing. If that vendor also performs, permits, or otherwise enables acts of solicitation described by paragraph (1) on its own platform to persons in the State, it is a charitable fundraising platform for its own platform;

- (3) A sponsoring organization of donor advised funds that solicits donors to open donor advised fund accounts or similar accounts, receives recommendations from donors on charitable organizations that may receive grants of funds previously contributed to the sponsoring organization for a donor's donor advised fund account, and the sponsoring organization does not list or reference by name one or more recipient charitable organizations for solicitation purposes on its platform for persons who do not have advisory privileges with respect to the granting of funds in a donor advised fund of the sponsoring organization; or
- (4) A person or entity that meets the definitions of both a professional solicitor and a charitable fundraising platform is only a professional solicitor when the person or entity for compensation performs any of the following acts of solicitation:
- (A) Direct mail solicitation, excluding electronic mail or messages;
  - (B) Estate gift or estate planning solicitation;
  - (C) In-person solicitation through a fundraising event, door-to-door or other public spaces, or a vending machine or similar equipment that does not use a person to perform the solicitation;
  - (D) Noncash solicitation;
  - (E) Nonincidental acts of solicitation that are not internet based, including solicitation through print, radio, or television;
  - (F) Solicitation involving receiving something of value, or a chance to win something of value, in connection with a donation; or
  - (G) Telephone solicitation.

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

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

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

- (1) Solicits donations through a charitable fundraising platform for itself from donors who use the charitable fundraising platform with the implied or express representation that the platform charity may grant donations to recipient charitable organizations; or
- (2) Grants funds to recipient charitable organizations based on purchases made or other activity performed by persons who use a charitable fundraising platform.

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

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

“Recipient charitable organization” means a charitable organization that is listed or referenced by name on a charitable fundraising platform or by a platform charity for solicitation purposes.”

2. By amending the definition of “charitable sales promotion” to read:  
 ““Charitable sales promotion” means an advertising or sales campaign, conducted by a commercial co-venturer, charitable fundraising platform, or platform charity, that represents that the purchase or use of goods or services offered by the commercial co-venturer, charitable fundraising platform, or platform charity will benefit, in whole or in part, a charitable organization or charitable purpose.”

3. By amending the definition of “gross revenue” to read:  
 ““Gross revenue” means income of any kind from all sources, including all amounts received as the result of any solicitation by a professional solicitor[-], charitable fundraising platform, or platform charity.”

4. By amending the definition of “owner” to read:  
 ““Owner” means any person who has a direct or indirect interest in any professional fundraising counsel [or], professional solicitor[-], charitable fundraising platform, or platform charity.”

SECTION 3. Section 467B-1.5, Hawaii Revised Statutes, is amended to read as follows:

**“§467B-1.5 Professional solicitors[;], charitable fundraising platforms, platform charities; required disclosures.** (a) Every professional solicitor, charitable fundraising platform, platform charity, and every employee or agent thereof, who solicits contributions from a prospective donor or contributor in this State shall at the outset of any oral or written request for a contribution:

- (1) Identify themselves by their true surname and first name, and the name of their employer or the contractor as the case may be, that is compensating the individual making the solicitation;
- (2) Identify the name of the professional solicitor, charitable fundraising platform, or platform charity registered with the department [of the attorney general] that has contracted with the charitable organization to provide the solicitation services and, if the individual is employed by a subcontractor, the name of the registered subcontractor;
- (3) Disclose that the person making the oral or written request for a donation is being paid to make such solicitation and the name of the charitable organization on whose behalf the person making the request is soliciting; and
- (4) Disclose, orally and in writing, the fact that a copy of the professional solicitor’s, charitable fundraising platform’s, or platform charity’s registration data and financial reports are available from the department [of the attorney general].

(b) A professional solicitor, charitable fundraising platform, or platform charity who makes an oral solicitation by telephone, door-to-door, or otherwise, prior to collecting or attempting to collect any contribution, shall provide a written confirmation of the expected contribution and clearly disclose that the contribution is not tax-deductible, if applicable, or, if the professional solicitor, charitable fundraising platform, or platform charity maintains that the contribution is tax-deductible in whole or in part, the portion of the contribution that the professional solicitor, charitable fundraising platform, or platform charity maintains is tax-deductible. The written confirmation shall also conspicuously

disclose the name and current address of the registered professional solicitor[-], charitable fundraising platform, or platform charity.”

SECTION 4. Section 467B-2.5, Hawaii Revised Statutes, is amended to read as follows:

**“§467B-2.5 Professional solicitor, charitable fundraising platform, and platform charity financial reports; contribution account.** (a) A professional solicitor, charitable fundraising platform, or platform charity shall file with the attorney general a financial report for any charitable solicitation campaign, including gross revenue from Hawaii donors and national gross revenue and an itemization of all expenses incurred on a form prescribed by the attorney general no more than ninety days after the end of the solicitation campaign and, for solicitation campaigns lasting more than one year, within ninety days after each anniversary of the commencement of the solicitation campaign and within ninety days after the end of the solicitation campaign.

(b) The attorney general may require the financial report required by subsection (a) to be submitted electronically and may require the use of electronic signatures. This report shall be signed by the professional solicitor, charitable fundraising platform, platform charity, or by an authorized officer or agent of the professional solicitor, charitable fundraising platform, or platform charity who shall certify that the statements therein are true and correct to the best of the solicitor’s, officer’s, or agent’s knowledge subject to penalties imposed by section 710-1063. If a financial report required under this section is not filed in a timely manner, taking into account any extension of time for filing, unless it is shown that the failure is due to reasonable cause, an initial late filing fee of \$100 shall be imposed, and an additional late filing fee of \$20 per day shall be imposed, for each day during which the violation continues; provided that the total fee amount imposed under this subsection shall not exceed \$1,000. The attorney general may waive all or part of the late filing fee imposed by this subsection if there is a reasonable cause for the failure to timely file. The professional solicitor, charitable fundraising platform, or platform charity shall provide a copy of the financial report to the charitable organization to which the financial report pertains within ten days of its submission of the report to the attorney general.

(c) A professional solicitor, charitable fundraising platform, or platform charity 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, charitable fundraising platform, or platform charity has deposited revenue from the solicitation campaign.

(d) Any material change in any information filed with the attorney general pursuant to this section shall be reported in writing by the professional solicitor, charitable fundraising platform, or platform charity to the attorney general not more than seven days after the change occurs.

(e) Each contribution in the control or custody of the professional solicitor, charitable fundraising platform, or platform charity in its entirety and within five days of its receipt, shall be deposited in an account at a bank or other

federally insured financial institution, which shall be in the name of the charitable organization. The charitable organization shall maintain and administer the account and shall have sole control of all withdrawals.”

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

“**§467B-5 Records to be kept.** (a) Every charitable organization, professional fundraising counsel, professional solicitor, ~~and~~ commercial co-venturer, charitable fundraising platform, and platform charity subject to this chapter shall keep true and accurate records as to its activities in a form that will accurately provide support for the information required by this chapter. Upon demand, the records shall be made available to the attorney general for inspection. Except as provided in subsection (b), records shall be retained for a period of not less than three years.

(b) If a professional solicitor, charitable fundraising platform, or platform charity sells tickets to an event and represents that tickets will be donated for use by another, the professional solicitor, charitable fundraising platform, or platform charity, for not less than three years after the completion of such event, shall maintain the following records, which shall be available for inspection upon demand by the attorney general:

- (1) The number of tickets purchased and donated by each contributor; and
- (2) The name and address of all organizations receiving donated tickets for use by others, including the number of tickets received by each organization.”

SECTION 6. Section 467B-5.5, Hawaii Revised Statutes, is amended to read as follows:

“**§467B-5.5 Commercial [co-venturer’s] co-venturers, charitable fundraising platforms, and platform charities charitable sales promotions.** (a) All charitable sales promotions by a commercial co-venturer, charitable fundraising platform, or platform charity shall disclose the name of the commercial co-venturer[-], charitable fundraising platform, or platform charity.

(b) Prior to the commencement of any charitable sales promotion in this State conducted by a commercial co-venturer, charitable fundraising platform, or platform charity using the name of a charitable organization, the commercial co-venturer, charitable fundraising platform, or platform charity shall obtain the written consent of the charitable organization whose name will be used during the charitable sales promotion. The commercial co-venturer, charitable fundraising platform, or platform charity shall file a copy of the written consent with the department not less than ten days prior to the commencement of the charitable sales promotion within this State. An authorized representative of the charitable organization and the commercial co-venturer, charitable fundraising platform, or platform charity shall sign the written consent, and the terms of the written consent shall include the following:

- (1) The goods or services to be offered to the public;
- (2) The geographic area where, and the starting and final date when, the offering is to be made;
- (3) The manner in which the name of the charitable organization is to be used, including any representation to be made to the public as to the amount or per cent per unit of goods or services purchased or used that is to benefit the charitable organization;
- (4) A provision for an accounting on a per unit basis, which shall be prepared by the commercial co-venturer, charitable fundraising plat-

form, or platform charity and given to the charitable organization, and the date when it is to be made, which date shall be no more than ninety days after the end of the charitable sales promotion and, for promotions lasting more than one year, shall be within ninety days after each anniversary of the commencement of the charitable sales promotion and within ninety days after the end of the charitable sales promotion; and

- (5) The date when and the manner in which the benefit is to be conferred on the charitable organization, which date shall be within ninety days after the end of the charitable sales promotion and, for charitable sales promotions lasting more than one year, shall be within ninety days after each anniversary of the commencement of the promotion and within ninety days after the end of the charitable sales promotion.

(c) A copy of an accounting shall be provided to the attorney general not more than twenty days after the copy is requested by the attorney general. An accounting shall be kept by the commercial co-venturer, charitable fundraising platform, or platform charity for a period of three years, unless the commercial co-venturer, charitable fundraising platform, or platform charity and the charitable organization mutually agree that the accounting should be kept by the charitable organization instead of the commercial co-venturer[-, charitable fundraising platform, or platform charity].

(d) A late filing fee of \$20 shall be imposed on a commercial co-venturer, charitable fundraising platform, or platform charity who fails to file a written consent as required by subsection (b), unless it is shown that the failure is due to reasonable cause, for each day during which the violation continues; provided that the total amount imposed under this subsection shall not exceed \$1,000.

(e) The written consent required under subsection (b) shall be signed by the authorized representative of the commercial co-venturer, charitable fundraising platform, or platform charity and the charitable organization certifying that the statements made therein are true and correct to the best of their knowledge subject to penalties imposed by section 710-1063. The attorney general may require the written consent to be submitted electronically and may require the use of electronic signatures.

(f) The attorney general may issue a cease and desist order whenever the attorney general finds that a commercial co-venturer, charitable fundraising platform, or platform charity has engaged in an act or practice that violates this chapter.

(g) When the attorney general finds that a commercial co-venturer, charitable fundraising platform, or platform charity has violated or is operating in violation of this chapter, the attorney general may impose an administrative fine not to exceed \$1,000 for each act that constitutes a violation of this chapter and an additional penalty, not to exceed \$100 per day, for each day during which the violation continues. 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 7. Section 467B-8, Hawaii Revised Statutes, is amended to read as follows:

“**§467B-8 Information filed to become public records.** Statements, reports, professional fundraising counsel contracts [ø], professional solicitor contracts, commercial co-venturer consents, charitable fundraising platform



contracts and consents, and platform charity contracts and consents, and all other documents and information required to be filed under this chapter or by the attorney general shall become government records in the department and be open to the general public for inspection pursuant to chapter 92F; provided that information in any registration statement concerning the residential addresses of any officer or director or that identifies a charitable organization's financial or banking accounts and audited financial statements submitted by registered charitable organizations shall be confidential under chapter 92F.”

SECTION 8. Section 467B-9, Hawaii Revised Statutes, is amended to read as follows:

**“§467B-9 Prohibited acts.** (a) No person, for the purpose of soliciting contributions from persons in the State, shall use the name of any other person except that of an officer, director, or trustee of the charitable organization by or for which contributions are solicited, without the written consent of the other persons.

A person shall be deemed to have used the name of another person for the purpose of soliciting contributions if the latter person's name is listed on any stationery, advertisement, brochure, or correspondence in or by which a contribution is solicited by or on behalf of a charitable organization or the latter person's name is listed or referred to in connection with a request for a contribution as one who has contributed to, sponsored, or endorsed the charitable organization or its activities.

(b) No charitable organization, professional solicitor, professional fundraising counsel, [or] commercial co-venturer, charitable fundraising platform, or platform charity soliciting contributions shall use a name, symbol, or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public.

(c) No person, in connection with any solicitation or sale, shall misrepresent or mislead anyone by any manner, means, practice, or device whatsoever, to believe that the solicitation or sale is being conducted on behalf of a charitable organization or that the proceeds of the solicitation or sale will be used for charitable purposes, if that is not the fact.

(d) No professional solicitor, charitable fundraising platform, or platform charity, and no agent, employee, independent contractor, or other person acting on behalf of the professional solicitor, charitable fundraising platform, or platform charity, shall solicit in the name of or on behalf of any charitable organization unless:

- (1) The professional solicitor, charitable fundraising platform, or platform charity has obtained the written authorization of two officers of the organization, which authorization shall bear the signature of the professional solicitor, charitable fundraising platform, or platform charity and the officers of the charitable organization and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date of issuance, and has filed a copy of the written authorization with the attorney general prior to the solicitation; and
- (2) The professional solicitor, charitable fundraising platform, or platform charity and any person who, for compensation, acts as an agent, employee, independent contractor, or otherwise on behalf of the professional solicitor, charitable fundraising platform, or platform charity, carries a copy of the authorization while conducting

solicitations, and exhibits it on request to persons solicited or police officers or agents of the department.

(e) No charitable organization, professional fundraising counsel, professional solicitor, [Ø] commercial co-venturer, charitable fundraising platform, or platform charity subject to this chapter shall use or exploit the fact of filing any statement, report, professional fundraising counsel contracts, written consents, [Ø] professional solicitor contracts, charitable fundraising platform contracts, or platform charity contracts and written consents, or other documents or information required to be filed under this chapter or with the department so as to lead the public to believe that the filing in any manner constitutes an endorsement or approval by the State of the purposes or goals for the solicitation by the charitable organization, professional fundraising counsel, professional solicitor, [Ø] commercial co-venturer[;], charitable fundraising platform, or platform charity; provided that the use of the following statement shall not be deemed a prohibited exploitation: "Information regarding this organization has been filed with the State of Hawaii department of the attorney general. Filing does not imply endorsement or approval of the organization or the public solicitation for contributions."

(f) No person, while soliciting, shall impede or obstruct, with the intent to physically inconvenience the general public or any member thereof in any public place or in any place open to the public.

(g) No person shall submit for filing on behalf of any charitable organization, professional fundraising counsel, professional solicitor, [Ø] commercial co-venturer, charitable fundraising platform, or platform charity, any statement, financial statement, report, attachment, or other information to be filed with the department that contains information, statements, or omissions that are false or misleading.

(h) No person shall solicit contributions from persons in the State or otherwise operate in the State as a charitable organization, an exempt charitable organization, professional fundraising counsel, professional solicitor, [Ø] commercial co-venturer, charitable fundraising platform, or platform charity unless the person has filed the information required by this chapter with the department in a timely manner.

(i) No person shall aid, abet, or otherwise permit any persons to solicit contributions from persons in the State unless the person soliciting contributions has complied with the requirements of this chapter.

(j) No person shall fail to file the information and registration statement, annual or financial reports, and other statements required by this chapter or fail to provide any information demanded by the attorney general pursuant to this chapter in a timely manner.

(k) No person shall employ in any solicitation or collection of contributions for a charitable organization, any device, scheme, or artifice to defraud or obtain money or property by means of any false, deceptive, or misleading pretense, representation, or promise.

(l) No person, in the course of any solicitation, shall represent that funds collected will be used for a particular charitable purpose, or particular charitable purposes, if the funds solicited are not used for the represented purposes.

(m) No person shall receive compensation from a charitable organization for obtaining moneys or bequests for that charitable organization if that person has also received compensation for advising the donor to make the donation; provided that compensation may be received if the person obtains the written consent of the donor to receive compensation from the charitable organization.

(n) No person shall act as a professional solicitor, charitable fundraising platform, or platform charity if the person, any officer, any person with a controlling interest therein, or any person the professional solicitor, charitable fundraising platform, or platform charity employs, engages, or procures to solicit for compensation, has been convicted by any federal or state court of any felony, or of any misdemeanor involving dishonesty or arising from the conduct of a solicitation for a charitable organization or purpose.

(o) No charitable organization shall use the services of an unregistered professional solicitor [ø], professional fundraising counsel[-], charitable fundraising platform, or platform charity.”

SECTION 9. Section 467B-9.5, Hawaii Revised Statutes, is amended to read as follows:

“**§467B-9.5 Financial statements.** Whenever the attorney general has reasonable grounds to believe that any charitable organization, professional fundraising counsel, professional solicitor, [ø] commercial co-venturer, charitable fundraising platform, or platform charity has engaged in any act or practice constituting a violation of this chapter or any rule or order adopted or issued, the attorney general may require the charitable organization, professional fundraising counsel, professional solicitor, [ø] commercial co-venturer, charitable fundraising platform, or platform charity to submit to the department an audited financial statement prepared in accordance with generally accepted accounting principles by an independent certified public accountant, or as otherwise required by the attorney general.”

SECTION 10. Section 467B-9.6, Hawaii Revised Statutes, is amended to read as follows:

“**§467B-9.6 Enforcement.** (a) If any charitable organization, professional fundraising counsel, professional solicitor, [ø] commercial co-venturer, charitable fundraising platform, or platform charity fails to file any statement, report, written consent, or other information required to be filed under this chapter, the attorney general may demand that the charitable organization, the professional fundraising counsel, professional solicitor, [ø] commercial co-venturer, charitable fundraising platform, or platform charity provide the statement, report, written consent, or other information not more than twenty days after demanded by the attorney general. This demand may be mailed to the address on file with the department.

(b) Whenever the attorney general has reason to believe that any charitable organization, professional fundraising counsel, professional solicitor, commercial co-venturer, charitable fundraising platform, or platform charity, or other person is operating in violation of this chapter, the attorney general may investigate and bring an action in any court of this State to enjoin the charitable organization, professional fundraising counsel, professional solicitor, commercial co-venturer, charitable fundraising platform, or platform charity, or other person from continuing the violation or doing any acts in furtherance thereof, and for any other relief that the court deems appropriate.”

SECTION 11. Section 467B-9.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The attorney general may refuse to register, revoke, or suspend the registration of any charitable organization, professional fundraising counsel, [ø] professional solicitor, charitable fundraising platform, or platform charity, or issue a cease and desist order whenever the attorney general finds that a charitable organization, professional fundraising counsel, [ø] professional solicitor,

charitable fundraising platform, or platform charity, or its agent, servant, or employee:

- (1) Has violated or is operating in violation 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;
- (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.”

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

“**§467B-12 Filing requirements for professional fundraising counsel [and], professional solicitors[-], charitable fundraising platforms, and platform charities.** (a) Every professional fundraising counsel [ø], professional solicitor, charitable fundraising platform, or platform charity, prior to any solicitation, shall register with the department. The registration statement shall contain the information set forth in subsection (e). 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. Renewal registration statements shall be filed with the department on or before July 1 of each calendar year by each professional fundraising counsel [ø], professional solicitor[-], charitable fundraising platform, or platform charity. The renewal statement shall contain the information set forth in subsection (e). 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. If a renewal registration required under this section is not filed, unless it is shown that the failure is due to reasonable cause, a fine of \$20 shall be imposed for each day during which the violation continues; provided that the total amount imposed under this subsection shall not exceed \$1,000.

(b) Each professional solicitor, charitable fundraising platform, or platform charity, 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 solicitor, charitable fundraising platform, or platform charity 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 [ø], professional solicitor, charitable fundraising platform, or platform charity 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 [ø], professional solicitor, charitable fundraising platform, or platform charity 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 [ø], professional solicitor, charitable fundraising platform, or platform charity may request a hearing.

(d) The attorney general may require that registration and renewal registration, surety bonds, and contracts be filed with the department electronically and may require the use of electronic signatures.

(e) Each registration and renewal registration shall contain:

- (1) The names and addresses of all owners, officers, and directors of a professional fundraising counsel~~[-]~~ or charitable fundraising platform, and the names and addresses of all owners, officers, and directors of a professional solicitor~~[-]~~ or platform charity;
- (2) A statement concerning the corporate form of the registrant, whether corporation, limited liability corporation, partnership, or individual;
- (3) A statement whether the registrant has an office in Hawaii and the name and phone number of the person in charge of the office;
- (4) The names and addresses of any individuals supervising any solicitation activity;
- (5) A statement whether the [registrant] has entered into a consent agreement with, or been disciplined by or subject to administrative action by, another governmental agency;
- (6) A statement whether any officer, director, or any person with a controlling interest in the registrant has ever been convicted of a felony or a misdemeanor involving dishonesty in the solicitation for a charitable purpose;
- (7) The date that the registrant began soliciting Hawaii residents on behalf of a charitable organization or providing professional fundraising counsel services; and
- (8) Whether any owners, directors, or officers are related to:
  - (A) Any other officers, directors, owners, or employees of the registrant;
  - (B) Any officer, director, trustee, or employee of a charitable organization under contract with the registrant; and
  - (C) Any vendor or supplier providing goods or services to a charitable organization under contract with the registrant.”

SECTION 13. Section 467B-12.5, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) There shall be a written contract between a charitable organization and a professional fundraising counsel ~~[ø]~~, professional solicitor, charitable fundraising platform, or platform charity that shall be filed by the professional fundraising counsel ~~[ø]~~, professional solicitor, charitable fundraising platform, or platform charity with the attorney general at least ten business days prior to the performance by the professional fundraising counsel ~~[ø]~~, professional solicitor, charitable fundraising platform, or platform charity 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 ~~[ø]~~, professional solicitor~~[-]~~, charitable fundraising platform, or platform charity. 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 ~~[ø]~~, professional solicitor, charitable fundraising platform, or platform charity 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 professional fundraising counsel as follows:
  - (A) If the compensation of the professional fundraising counsel [øø], professional solicitor, charitable fundraising platform, or platform charity 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 [øø], professional solicitor, charitable fundraising platform, or platform charity is to be reimbursed for fundraising costs;
  - (B) If the compensation of the professional solicitor, charitable fundraising platform, or platform charity 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 professional fundraising counsel, charitable fundraising platform, or platform charity 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) In the case of a professional fundraising counsel, charitable fundraising platform, or platform charity, a statement that the professional fundraising counsel will not at any time have custody or control of contributions~~;~~, as applicable;
- (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.
  - (b) No professional fundraising counsel [øø], professional solicitor, charitable fundraising platform, or platform charity shall contract with a charitable organization unless the professional fundraising counsel [øø], professional solicitor, charitable fundraising platform, or platform charity is registered with the department. A contract with an unregistered professional fundraising counsel [øø], professional solicitor, charitable fundraising platform, or platform charity shall be voidable at the option of the charitable organization.

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(c) Whenever a charitable organization contracts with a professional fundraising counsel [ø¶], professional solicitor, charitable fundraising platform, or platform charity, the charitable organization shall have the right to cancel the contract without cost, penalty, or liability, for a period of ten days following the date on which that contract is executed. Any provision in the contract that is intended to waive this right of cancellation shall be void and unenforceable.”

SECTION 14. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 16. This Act shall take effect on January 1, 2026.

(Approved July 5, 2024.)

### Note

1. Edited pursuant to HRS §23G-16.5.