

JAN 24 2024

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# 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 purposes 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 pursuant shall not be required  
10 for tier 1, tier 2, or tier 3 activities, if the charitable  
11 fundraising 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 this 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 this  
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 shall be only a  
8           commercial fundraiser for charitable purposes when the  
9           person or entity for compensation performs any of the  
10          following 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 third  
20 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."

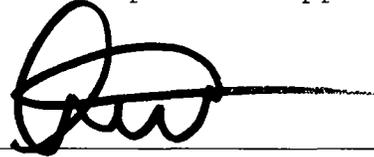
3        SECTION 2. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

6        SECTION 3. New statutory material is underscored.

7        SECTION 4. This Act shall take effect upon its approval.

8

INTRODUCED BY: \_\_\_\_\_

A handwritten signature in black ink, appearing to be 'Jaw', is written over a horizontal line.

# S.B. NO. 2983

**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.

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

