
A BILL FOR AN ACT

RELATING TO CHARITABLE SOLICITATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that individuals who
2 donate tangible property using collection bins or receptacles
3 may reasonably believe that the tangible property is donated
4 directly to charitable organizations, and may also reasonably
5 believe they are entitled to a federal income tax credit
6 deduction for the value of the donated property.

7 The legislature further finds that, in some cases, the
8 entities operating collection bins or receptacles on behalf of
9 the charity will pay the charity based on the weight of the
10 donated items received, which can be as low as two to five cents
11 per pound, and then resell the donated property at for-profit
12 retail locations. Most donors are not aware of these
13 arrangements between the collection bin operator and associated
14 charitable organizations.

15 The legislature also finds that existing law does not
16 adequately address this charitable solicitation business model.

17 The purpose of this Act is to:



1 (1) Establish prompt payment and financial reporting
2 requirements for professional solicitors that sell
3 donated or collected non-perishable tangible property
4 on behalf of charitable organizations; and

5 (2) Prohibit professional solicitors that sell donated or
6 collected non-perishable tangible property from
7 failing to prominently disclose certain information on
8 any collection bin, container, or receptacle used to
9 receive donated or collected property; comply with
10 prompt payment and financial reporting requirements;
11 and include certain terms in contracts with charitable
12 organizations.

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

15 1. By amending the definition of "contribution" to read:

16 ""Contribution" means the promise or grant of any money or
17 property of any kind or value, including [~~the~~] non-perishable
18 tangible property, or a promise to pay[~~r~~] or pledge, except
19 payments by members of a charitable organization for membership
20 fees, dues, fines, or assessments, or for services rendered to
21 individual members, if membership in the charitable organization



1 confers a bona fide right, privilege, professional standing,
2 honor, or other direct benefit, other than the right to vote,
3 elect officers, or hold offices, and except money or property
4 received from any governmental authority, or a grant or subsidy
5 from any organization exempt from taxation under section
6 501(c)(3) of the Internal Revenue Code."

7 2. By amending the definition of "solicit" and
8 "solicitation" to read:

9 ""Solicit" and "solicitation" mean a request directly or
10 indirectly for money, credit, property, financial assistance, or
11 thing of value on the plea or representation that the money,
12 credit, property, financial assistance, or thing of value, or
13 any portion thereof, will be used for a charitable purpose or to
14 benefit a charitable organization. [~~These terms shall include~~]
15 "Solicit" and "solicitation" includes the following:

- 16 (1) Any oral or written request;
- 17 (2) The making of any announcement to any organization for
18 the purpose of further dissemination, including
19 announcements to the press, over the radio or
20 television, or by telephone, telegraph, or facsimile,



1 concerning an appeal or campaign by or for any
2 charitable organization or purpose;

3 (3) The distribution, circulation, posting, or publishing
4 of any handbill, written advertisement, or other
5 publication that directly or by implication seeks to
6 obtain public support;

7 (4) Where the sale or offer or attempted sale, of any
8 advertisement, advertising space, book, card, tag,
9 coupon, device, magazine, membership, merchandise,
10 subscription, flower, ticket, candy, cookies, or other
11 tangible item in connection with which any appeal is
12 made for any charitable organization or purpose; or
13 where the name of any charitable organization is used
14 or referred to in any appeal as an inducement or
15 reason for making any sale; or where in connection
16 with any sale, any statement is made that the whole or
17 any part of the proceeds from any sale will be used
18 for any charitable purpose or to benefit any
19 charitable organization; and

20 (5) A request made through the use of receptacles for
21 contributions, including non-perishable tangible



1 property, such as honor boxes, vending machines,
2 wishing wells, contribution boxes, [~~and~~] novelty
3 machines, and collection bins or containers, where a
4 charitable appeal is used or referred to or implied as
5 an inducement or reason to contribute.

6 A solicitation occurs whether or not the person making the
7 solicitation receives any contribution. However, [~~the term~~
8 ~~shall~~] solicitation does not include the submission of a grant
9 or subsidy proposal or application to a governmental authority
10 or any organization exempt from taxation under section 501(c)(3)
11 of the Internal Revenue Code."

12 SECTION 3. Section 467B-2.5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§467B-2.5 Professional solicitor financial reports;**
15 **contribution account.** (a) A professional solicitor shall file
16 with the attorney general a financial report for any charitable
17 solicitation campaign, including gross revenue from Hawaii
18 donors and national gross revenue and an itemization of all
19 expenses incurred on a form prescribed by the attorney general
20 no more than ninety days after the end of the solicitation
21 campaign and, for solicitation campaigns lasting more than one



1 year, within ninety days after each anniversary of the
2 commencement of the solicitation campaign and within ninety days
3 after the end of the solicitation campaign.

4 (b) The attorney general may require the financial report
5 required by subsection (a) to be submitted electronically and
6 may require the use of electronic signatures. This report shall
7 be signed by the professional solicitor, or an authorized
8 officer or agent of the professional solicitor who shall certify
9 that the statements therein are true and correct to the best of
10 the solicitor's, officer's, or agent's knowledge subject to
11 penalties imposed by section 710-1063. If a financial report
12 required under this section is not filed in a timely manner,
13 taking into account any extension of time for filing, unless it
14 is shown that the failure is due to reasonable cause, an initial
15 late filing fee of \$100 shall be imposed, and an additional late
16 filing fee of \$20 per day shall be imposed, for each day during
17 which the violation continues; provided that the total fee
18 amount imposed under this subsection shall not exceed \$1,000.
19 The attorney general may waive all or part of the late filing
20 fee imposed by this subsection if there is a reasonable cause
21 for the failure to timely file. The professional solicitor



1 shall provide a copy of the financial report to the charitable
2 organization to which the financial report pertains within ten
3 days of its submission of the report to the attorney general.

4 (c) A professional solicitor shall maintain during each
5 solicitation campaign and for not less than three years after
6 the completion of that campaign the following records, which
7 shall be available for inspection upon demand by the attorney
8 general:

9 (1) The date and amount of each contribution received and
10 the name and address of each contributor;

11 (2) The name and residence of each employee, agent, or
12 other person involved in the solicitation;

13 (3) Records of all revenue received and expenses incurred
14 in the course of the solicitation campaign; and

15 (4) The location and account number of each bank or other
16 financial institution account in which the
17 professional solicitor has deposited revenue from the
18 solicitation campaign.

19 (d) Any material change in any information filed with the
20 attorney general pursuant to this section shall be reported in



1 writing by the professional solicitor to the attorney general
2 [~~not~~] no more than seven days after the change occurs.

3 (e) Each contribution in the control or custody of the
4 professional solicitor in its entirety and within five days of
5 its receipt, shall be deposited in an account at a bank or other
6 federally insured financial institution, which shall be in the
7 name of the charitable organization. The charitable
8 organization shall maintain and administer the account and shall
9 have sole control of all withdrawals.

10 (f) If the professional solicitor, directly or indirectly,
11 sells donated or collected tangible non-perishable property, the
12 professional solicitor shall deposit the full amount owed to the
13 charitable organization by the professional solicitor in an
14 account at a bank or other federally insured financial
15 institution, which shall be in the name of that charitable
16 organization, within forty-five days after the sale.

17 (g) If the professional solicitor, directly or indirectly,
18 sells donated or collected non-perishable tangible property and
19 compensates a charitable organization based on the weight of
20 donor contributions, the professional solicitor's financial
21 report shall include:



- 1 (1) The amount paid by the professional solicitor to any
- 2 charitable organization during the applicable period;
- 3 (2) The gross weight of all contributions by donors to the
- 4 professional solicitor, on behalf of each respective
- 5 charitable organization, during the applicable period;
- 6 and
- 7 (3) The dollar amount of compensation per pound or other
- 8 weight measurement paid by the professional solicitor
- 9 to each charitable organization."

10 SECTION 4. Section 467B-9, Hawaii Revised Statutes, is
 11 amended to read as follows:

12 "**§467B-9 Prohibited acts.** (a) No person, for the purpose
 13 of soliciting contributions from persons in the State, shall use
 14 the name of any other person except that of an officer,
 15 director, or trustee of the charitable organization by or for
 16 which contributions are solicited, without the written consent
 17 of the other persons.

18 A person shall be deemed to have used the name of another
 19 person for the purpose of soliciting contributions if the latter
 20 person's name is listed on any stationery, advertisement,
 21 brochure, or correspondence in or by which a contribution is



1 solicited by or on behalf of a charitable organization or the
2 latter person's name is listed or referred to in connection with
3 a request for a contribution as one who has contributed to,
4 sponsored, or endorsed the charitable organization or its
5 activities.

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

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

19 (d) No professional solicitor, charitable fundraising
20 platform, or platform charity, and no agent, employee,
21 independent contractor, or other person acting on behalf of the



1 professional solicitor, charitable fundraising platform, or
2 platform charity, shall solicit in the name of or on behalf of
3 any charitable organization unless the charitable fundraising
4 platform or platform charity has obtained written consent
5 pursuant to section 467B-2.3(e) or:

6 (1) The professional solicitor has obtained the written
7 authorization of two officers of the organization,
8 which authorization shall bear the signature of the
9 professional solicitor and the officers of the
10 charitable organization and shall expressly state on
11 its face the period for which it is valid, which shall
12 not exceed one year from the date of issuance, and has
13 filed a copy of the written authorization with the
14 attorney general before the solicitation; and

15 (2) The professional solicitor and any person who, for
16 compensation, acts as an agent, employee, independent
17 contractor, or otherwise on behalf of the professional
18 solicitor, carries a copy of the authorization while
19 conducting solicitations, and exhibits it on request
20 to persons solicited or police officers or agents of
21 the department.



1 (e) No charitable organization, professional fundraising
2 counsel, professional solicitor, commercial co-venturer,
3 charitable fundraising platform, or platform charity subject to
4 this chapter shall use or exploit the fact of filing any
5 statement, report, professional fundraising counsel contracts,
6 written consents, professional solicitor contracts, charitable
7 fundraising platform contracts, or platform charity contracts
8 and written consents, or other documents or information required
9 to be filed under this chapter or with the department so as to
10 lead the public to believe that the filing in any manner
11 constitutes an endorsement or approval by the State of the
12 purposes or goals for the solicitation by the charitable
13 organization, professional fundraising counsel, professional
14 solicitor, commercial co-venturer, charitable fundraising
15 platform, or platform charity; provided that the use of the
16 following statement shall not be deemed a prohibited
17 exploitation: "Information regarding this organization has been
18 filed with the State of Hawaii department of the attorney
19 general. Filing does not imply endorsement or approval of the
20 organization or the public solicitation for contributions."



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

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

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

19 (i) No person shall aid, abet, or otherwise permit any
20 persons to solicit contributions from persons in the State



1 unless the person soliciting contributions has complied with the
2 requirements of this chapter.

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

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

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

17 (m) No person shall receive compensation from a charitable
18 organization for obtaining moneys or bequests for that
19 charitable organization if that person has also received
20 compensation for advising the donor to make the donation;
21 provided that compensation may be received if the person obtains



1 the written consent of the donor to receive compensation from
2 the charitable organization.

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

12 (o) No charitable organization shall use the services of
13 an unregistered professional solicitor, professional fundraising
14 counsel, charitable fundraising platform, or platform charity.

15 (p) No professional solicitor, who directly or indirectly
16 sells any donated or collected non-perishable tangible property,
17 shall fail to:

18 (1) Prominently disclose in writing on any collection bin,
19 container, or receptacle used by the professional
20 solicitor to receive donated or collected non-
21 perishable tangible property that:



- 1 (A) The collection bin, container, or receptacle is
2 operated and used by a paid professional
3 solicitor;
- 4 (B) The professional solicitor resells the donated or
5 collected property at retail stores and that a
6 charitable organization is either paid a
7 percentage of the sale proceeds or an amount
8 based on the weight of the donated or collected
9 tangible property, whichever is applicable;
- 10 (C) Donated or collected non-perishable tangible
11 property is not a tax-deductible charitable
12 contribution under the Internal Revenue Code of
13 1986, as amended, if applicable;
- 14 (D) The professional solicitor is registered with the
15 attorney general; and
- 16 (E) The professional solicitor's registration form
17 and contracts with the charitable organization
18 benefited by the collection are available for
19 public inspection and copying;



- 1 (2) Provide complete and timely payment of the amount owed
- 2 to a charitable organization within forty-five days
- 3 after the sale of non-perishable tangible property;
- 4 (3) Provide complete and timely annual financial reports
- 5 to the charitable organization and the attorney
- 6 general, as required by section 467B-2.5; and
- 7 (4) Include in the contract with the charitable
- 8 organization the terms required by section 467B-12.5."

9 SECTION 5. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect on July 1, 3000.



Report Title:

Charitable Solicitation; Professional Solicitors; Non-Perishable Tangible Property; Donations; Disclosures; Payment; Financial Reports

Description:

Establishes prompt payment and financial reporting requirements for professional solicitors that sell donated or collected non-perishable tangible property on behalf of charitable organizations. Prohibits professional solicitors that sell donated or collected non-perishable tangible property from failing to prominently disclose certain information on any collection bin, container, or receptacle used to receive donated or collected property; comply with prompt payment and financial reporting requirements; and include certain terms in contracts with charitable organizations. Effective 7/1/3000. (HD1)

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