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# 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 also 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 re-sell 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 further finds that existing law does not  
16 adequately address this charitable solicitation business model.



1           Accordingly, the purpose of this Act is to regulate  
2 professional solicitors that operate collection bins or  
3 receptacles to solicit and accept donation of non-perishable  
4 tangible property, purportedly to benefit charitable  
5 organizations, but then process or re-sell the donated tangible  
6 property in for-profit retail or thrift stores.

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

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

10           "Contribution" means the promise or grant of any money or  
11 property of any kind or value, including [~~the~~] non-perishable  
12 tangible property, or a promise to pay[-] or pledge, except  
13 payments by members of a charitable organization for membership  
14 fees, dues, fines, or assessments, or for services rendered to  
15 individual members, if membership in the charitable organization  
16 confers a bona fide right, privilege, professional standing,  
17 honor, or other direct benefit, other than the right to vote,  
18 elect officers, or hold offices, and except money or property  
19 received from any governmental authority, or a grant or subsidy  
20 from any organization exempt from taxation under section  
21 501(c)(3) of the Internal Revenue Code."



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

3           ""Solicit" and "solicitation" mean a request directly or  
4 indirectly for money, credit, property, financial assistance, or  
5 thing of value on the plea or representation that the money,  
6 credit, property, financial assistance, or thing of value, or  
7 any portion thereof, will be used for a charitable purpose or to  
8 benefit a charitable organization. These terms shall include  
9 the following:

- 10           (1) Any oral or written request;
- 11           (2) The making of any announcement to any organization for  
12           the purpose of further dissemination, including  
13           announcements to the press, over the radio or  
14           television, or by telephone, telegraph, or facsimile,  
15           concerning an appeal or campaign by or for any  
16           charitable organization or purpose;
- 17           (3) The distribution, circulation, posting, or publishing  
18           of any handbill, written advertisement, or other  
19           publication that directly or by implication seeks to  
20           obtain public support;



- 1 (4) Where the sale or offer or attempted sale, of any  
2 advertisement, advertising space, book, card, tag,  
3 coupon, device, magazine, membership, merchandise,  
4 subscription, flower, ticket, candy, cookies, or other  
5 tangible item in connection with which any appeal is  
6 made for any charitable organization or purpose; or  
7 where the name of any charitable organization is used  
8 or referred to in any appeal as an inducement or  
9 reason for making any sale; or where in connection  
10 with any sale, any statement is made that the whole or  
11 any part of the proceeds from any sale will be used  
12 for any charitable purpose or to benefit any  
13 charitable organization; and
- 14 (5) A request made through the use of receptacles for  
15 contributions, including non-perishable tangible  
16 property, such as honor boxes, vending machines,  
17 wishing wells, contribution boxes, [~~and~~] novelty  
18 machines, and collection bins or containers, where a  
19 charitable appeal is used or referred to or implied as  
20 an inducement or reason to contribute.



1           A solicitation occurs whether or not the person making the  
 2 solicitation receives any contribution. However, the term shall  
 3 not include the submission of a grant or subsidy proposal or  
 4 application to a governmental authority or any organization  
 5 exempt from taxation under section 501(c)(3) of the Internal  
 6 Revenue Code."

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

9           "**§467B-2.5 Professional solicitor financial reports;**  
 10 **contribution account.** (a) A professional solicitor shall file  
 11 with the attorney general a financial report for any charitable  
 12 solicitation campaign, including gross revenue from Hawaii  
 13 donors and national gross revenue and an itemization of all  
 14 expenses incurred on a form prescribed by the attorney  
 15 general no more than ninety days after the end of the  
 16 solicitation campaign and, for solicitation campaigns  
 17 lasting more than one year, within ninety days after each  
 18 anniversary of the commencement of the solicitation  
 19 campaign and within ninety days after the end of the  
 20 solicitation campaign.



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



1 financial report pertains within ten days of its submission  
2 of the report to the attorney general.

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

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

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

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

15 (4) The location and account number of each bank or  
16 other financial institution account in which the  
17 professional solicitor has deposited revenue from  
18 the 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 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 non-perishable tangible property, shall fail  
17 to:

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



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



- 1        (3) Provide complete and timely annual financial reports
- 2                to the charitable organization and the attorney
- 3                general, as required by section 467B-2.5; and
- 4        (4) Include in the contract with the charitable
- 5                organization the terms required by section 467B-12.5."

6        SECTION 5. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8        SECTION 6. This Act shall take effect on July 1, 2050.



**Report Title:**

Charitable Solicitation; Professional Solicitors; Regulation

**Description:**

Requires professional solicitors operating public collection receptacles to solicit donations of non-perishable tangible property who later re-sell the items to deposit funds with charitable organizations within a specified timeframe, provide certain information in financial reports, and prominently disclose certain information on collection receptacles.

Effective 7/1/2050. (SD2)

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