

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

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER**

**SOLICITATION OF FUNDS FROM THE PUBLIC**

**Section -1. Definitions.** As used in this chapter, unless the context otherwise requires:

(1) ‘Charitable organization’ means any benevolent, philanthropic, patriotic, or eleemosynary person or one purporting to be such which solicits and collects funds for charitable purposes and includes each county, or other local division within this State of such charitable organization, provided such county division has authority and discretion to disburse funds or property otherwise than by transfer to any parent organization.

(2) ‘Charitable purpose’ means any benevolent, philanthropic, patriotic,

or eleemosynary purpose.

(3) 'Contribution' means the promise or grant of any money or property of any kind or value, including the promise to pay, except payments by members of a charitable organization for membership fees, dues, fines, or assessments, or for services rendered to individual members, if membership in such charitable organization confers a bona fide right, privilege, professional standing, honor or other direct benefit, other than the right to vote, elect officers, or hold offices, and except money or property received from any governmental authority.

(4) 'Department' means department of regulatory agencies of the State.

(5) 'Director' means the director of regulatory agencies of the State.

(6) 'Federated fund-raising organization' means a federation of independent charitable organizations which have voluntarily joined together, including but not limited to a United Fund or Community Chest, for purposes of raising and distributing money for and among themselves and where membership does not confer operating authority and control of the individual agencies upon the federated group organization.

(7) 'Membership' means membership in a charitable organization which provides services and confers a bona fide right, privilege, professional standing, honor or other direct benefit upon its members, in addition to the right to vote, elect officers or hold offices, upon the payment of fees, dues, assessments, etc. It does not include those persons who are granted a membership upon making a contribution as a result of solicitation.

(8) 'Parent organization' means that part of a charitable organization which coordinates, supervises or exercises control over policy, fund raising, and expenditures, or assists or advises one or more chapters, branches or affiliates in the State.

(9) 'Person' means any individual, organization, trust, foundation, group, association, partnership, corporation, society, or any combination of them.

(10) 'Professional fund-raising counsel' means any person who for a flat fixed fee plans, conducts, manages, carries on, advises or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of any charitable organization, but who actually solicits no contributions as a part of his services. It does not include a bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the State.

(11) 'Professional solicitor' means any person who, for a financial or other consideration, solicits contributions for, or on behalf of a charitable organization, whether such solicitation is performed personally or through his agents, servants or employees or through agents, servants or employees specially employed by, or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or a person who plans, conducts, manages, carries on, advises or acts as a consultant to a charitable organization in connection with the solicitation of contributions but does not qualify as a 'professional fund-raising counsel' within the meaning of this chapter. It does not include a bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the State and

also an attorney, investment counselor or banker who advises a person to make a contribution to a charitable organization as part of his employment.

**Section -2. Registration of charitable organizations.** (a) Every charitable organization, except as otherwise provided in this chapter, which intends to solicit contributions within the State, or have funds solicited on its behalf, shall, prior to any solicitation, file a registration statement with the director upon forms prescribed by the director, which shall be valid for one full year and which shall be refiled in the next and each following year in which the charitable organization is engaged in solicitation activities. It shall be the duty of the president, chairman or principal officer or the charitable organization to file the statement required under this chapter. The statement shall be sworn to and shall contain the following information:

(1) The name of the charitable organization and the purpose for which it was organized.

(2) The principal address of the charitable organization and the addresses of any office in the State. If the charitable organization does not maintain an office, the name and address of the person having custody of its financial records.

(3) The name and address of any chapter, branch or affiliate in the State.

(4) The date and place when the charitable organization was legally established, the form of its organization, and a reference to any determination of its tax-exempt status under the Internal Revenue Code.

(5) The name and address of all officers, directors, trustees, and the principal salaries executive staff officer.

(6) A copy of a balance sheet and income and expense statement audited by an independent public accountant for the immediately preceding fiscal year, or a copy of a financial statement audited by an independent public accountant covering, in a consolidated report, complete information as to all the preceding year's fund-raising activities of the charitable organization, showing the kind and amount of funds raised, costs and expenses incidental thereto and allocation or disbursement of funds raised.

(7) Whether the charitable organization intends to solicit contributions from the public directly or have the solicitation done on its behalf by others.

(8) Whether the charitable organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions.

(9) The general purpose for which the contributions to be solicited shall be used.

(10) The name under which it intends to solicit contributions.

(11) The name of the individual or officer of the charitable organization who will have final responsibility for the custody of the contributions.

(12) The name of the individual or officer of the charitable organization responsible for the final distribution of the contributions.

(b) Each chapter, branch or affiliate, except an independent member agency of a federated fund-raising organization, may separately report the information required by this section, or report the information to its parent or-

ganization which shall furnish the information as to its State affiliates, chapters and branches in a consolidated form to the department.

(c) The registration forms and other documents prescribed by the director shall be signed by an authorized officer, an independent public accountant and by the chief fiscal officer of the charitable organization and shall be verified under oath.

(d) Every charitable organization which submits an independent registration to the department shall pay an annual registration fee of \$10. A parent organization filing on behalf of one or more chapters, branches or affiliates and a federated fund-raising organization filing on behalf of its member agencies shall pay a single annual registration fee for itself and the chapters, branches, affiliates or member agencies included in the registration statement.

**Section -3. Reciprocal agreements.** The director may enter into a reciprocal agreement with the appropriate authority of another state for the purpose of exchanging information with respect to charitable organizations, professional fund-raising counsel and professional solicitors. Pursuant to the agreement, the director may accept information filed by a charitable organization, professional fund-raising counsel or professional solicitor with the appropriate authority of another state in lieu of the information required to be filed in accordance with this chapter, if the information is substantially similar to the information required under this chapter. The director shall also grant exemption from the requirement of filing of annual registration statement to charitable organizations organized under the laws of another state having their principal place of business outside the State, whose funds are derived principally from sources outside the State and which have been granted exemption from the filing of registration statements by the State under whose laws they are organized if the State has a statute similar in substance to this chapter.

**Section -4. Nonresident registration.** Any charitable organization, professional fund raiser, professional solicitor, or resident having its principal place of business without the State or organized under any by virtue of the laws of a foreign state, which solicits contributions from people in this State, shall be deemed to have irrevocably appointed the director as its agent upon whom may be served any summons, subpoena, subpoena duces tecum or other process directed to such charitable organization, or any partner, principal, officer, or director thereof, or to such professional solicitor, in any action or proceeding brought by the attorney general under this chapter. Service of such process upon the director shall be deemed sufficient service; provided that notice of the service and a copy of the process are sent by the attorney general to the charitable organization, professional fund raiser or professional solicitor by registered mail with return receipt requested, at its office as set forth in the registration form required to be filed by this chapter or, in default of the filing of such form, at the last address known to the attorney general. The service of process shall be completed within ten days after the receipt by the attorney general of a return receipt purporting to be signed by the addressee or a person qualified to receive its registered mail or if acceptance was refused by the addressee or its agent, ten days after the return to the attorney general of the orig-

inal envelope bearing a notation by the postal authorities that receipt thereof was refused.

**Section -5. Records to be kept by charitable organizations, professional fund-raising counsel and professional solicitors.** Every charitable organization subject to this chapter shall, in accordance with the rules and regulations prescribed by the director, keep true and accurate fiscal records as to its activities in the State in the form as will accurately provide the information required by this chapter. Upon demand, the records shall be made available to the director or the attorney general for inspection. Such records shall be retained for a period of three years after the end of the period of registration to which they relate.

**Section -6. Filing of agreements.** (a) Every written contract or in the absence of a contract in writing, a written statement of the nature of the arrangement between professional fund-raising counsel and a charitable organization shall be filed with the department within ten days after the contract or written agreement is concluded.

(b) Every written contract or, in the absence of a contract in writing, a written statement of the nature of the arrangement between a professional solicitor and a charitable organization shall be filed with the department within ten days after the contract or arrangement is concluded. If the contract or arrangement with a professional solicitor does not provide for compensation on a percentage basis, the department shall examine the contract to ascertain whether the compensation to be paid in the circumstances is likely to exceed 10 per cent of the total moneys, pledges or other property raised or received as a result of the contract or arrangement; if the reasonable probabilities are that the compensation will exceed 10 per cent of the total moneys, pledges or other property the director shall disapprove the contract or arrangement within ten days after its filing. No registered charitable organization or professional solicitor shall carry out or execute a disapproved contract, or receive or perform services, or receive or make payments, pursuant to a disapproved contract. Any party to a disapproved contract shall, upon written request made within thirty days of the disapproval, be given a hearing before the director within thirty days after such request is filed.

(c) All agreements and arrangements between professional fund-raising counsel or solicitors and charitable organizations shall be reduced to writing before executed or acted upon.

**Section -7. Limitations on amount of payments for solicitation activities.** (a) No charitable organization shall pay or agree to pay to a professional solicitor or his agents, servants or employees a total amount in excess of 10 per cent (including reimbursement for expenses incurred) of the total moneys, pledges or other property raised or received as a result of the solicitation activities or campaigns.

(b) For purposes of this section, the total moneys, funds, pledges or other property raised or received shall not include costs to the charitable organization or professional solicitor of goods sold or service provided to the public in

connection with the soliciting of contributions.

**Section -8. Information filed to become public records.** Registration statements and applications, reports, professional fund-raising counsel contracts or professional solicitor contracts and all other documents and information required to be filed under this chapter or by the director shall become public records in the department, and shall be open to the general public for inspection at the time and under the conditions as the director may prescribe.

**Section -9. Prohibited acts.** (a) No person shall for the purpose of soliciting contributions from persons in the State 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.

(b) 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 his 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.

(c) No charitable organization or professional fund raiser 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.

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

(e) No professional solicitor shall solicit in the name of or on behalf of any charitable organization unless the solicitor

(1) has written authorization of two officers of such organization, a copy of which shall be filed with the director; the written authorization shall bear the signature of the solicitor 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

(2) has the authorization with him when making solicitations and exhibits the same on request to persons solicited or police officers or agents of the department.

(f) No charitable organization, professional fund-raising counsel or professional solicitor subject to this chapter, shall use or exploit the fact of registration so as to lead the public to believe that such registration in any manner constitutes an endorsement or approval by the State of the purposes or goals for the solicitation by the organization; provided that the use of the following statement shall not be deemed a prohibited exploitation: 'Registered with the State of Hawaii department of regulatory agencies as required by law. Registration does not imply endorsement of a public solicitation for contributions.'

**Section -10. Enforcement and penalties.** (a) If any registered charitable organization, professional fund-raising counsel or professional solicitor fails to file any registration application or statement, report or other information required to be filed under this chapter or otherwise violates this chapter, the director shall notify the delinquent charitable organization, professional fund-raising counsel or professional solicitor by mailing a notice by registered or certified mail, with return receipt requested, to its last known address. If the required registration application or statement, annual report or other information is not filed or if the existing violation is not discontinued within two weeks after the formal notification or receipt of the notice, the director may cancel, suspend or refuse to accept the registration or other required information of the delinquent charitable organization, professional fund-raising counsel or professional solicitor.

(b) The director, upon his own motion or upon complaint of any person, may, if he has reasonable ground to suspect a violation, investigate any charitable organization, professional fund-raising counsel or professional solicitor to determine whether the charitable organization, professional fund-raising counsel or professional solicitor has violated this chapter or has filed any application or other information required under this chapter which contains false or misleading statements. If the director after notice and hearing finds that any application or other information contains false or misleading statements, or that a registrant under this chapter has violated this chapter, he may order the registration suspended or cancelled.

(c) The registration of any charitable organization, professional fund-raising counsel or professional solicitor, which knowingly makes a false or misleading statement in any registration application or statement, report or other information required to be filed by the department of this chapter shall, upon notice and hearing, be revoked.

(d) All proceedings under this chapter shall be conducted in accordance with this chapter and all adjudications of the director shall be subject to judicial review as provided therein.

(e) In addition to the foregoing, any person who wilfully and knowingly violates this chapter, or who wilfully and knowingly gives false or incorrect information to the director in filing statements or reports required by this chapter, whether the reports or statements are verified or not, shall for the first offense be fined not less than \$100 nor more than \$500 or imprisoned not more than six months, or both, and for the second and any subsequent offense be fined not less than \$500 nor more than \$1,000, or imprisoned not more than one year, or both.

(f) Whenever the attorney general or any county attorney has reason to believe that any charitable organization, professional fund-raising counsel or professional solicitor is operating in violation of this chapter or has knowingly and wilfully made any false statement in any registration application or statement, report or other information required to be filed by this chapter or whenever a charitable organization, professional fund-raising counsel or professional solicitor fails to file a registration statement required by this chapter, or when-

ever there is employed or is about to be employed in any solicitation or collection of contributions for a charitable organization any device, scheme or artifice to defraud or to obtain money or property by means of any false pretense, representation or promise, or whenever the officers or representatives of any charitable organization, professional fund-raising counsel or professional solicitor have refused or failed after notice to produce any records of the organization, or whenever the funds raised by solicitation activities are not devoted or will not be devoted to the charitable purposes of the charitable organization, in addition to all other actions authorized by law, the attorney general or county attorney may bring an action in the name of the State against the charitable organization and its officers, or professional fund-raising counsel or professional solicitor or any person employing any device, scheme, artifice, false representation or promise, to defraud or obtain money or other property, to enjoin the charitable organization or professional fund-raising counsel or professional solicitor or other person from continuing the violation, solicitation or collection, or engaging therein, or doing any acts in furtherance thereof and for such other relief as the court deems appropriate.

(g) The attorney general or county attorney may exercise the authority granted in this section against any charitable organization which operates under the guise or pretense of being an organization exempted by the provisions of section -12, and is not in fact an organization entitled to such an exemption.

**Section -11. Exemptions.** This chapter shall not apply to:

(a) A corporation sole or other religious corporation, trust or organization incorporated or established for religious purpose, nor to any agency or organization incorporated or established for charitable, hospital or educational purposes and engaged in effectuating one or more of such purposes, that is affiliated with, operated by, or supervised or controlled by a corporation sole or other religious corporation, trust or organization incorporated or established for religious purposes, nor to other religious agencies or organizations which serve religion by the preservation of religious rights and freedom from persecution or prejudice or by fostering religion, including the moral and ethical aspects of a particular religious faith.

(b) Educational institutions that are recognized by the superintendent of education or that are accredited by a regional accrediting association or by an organization affiliated with the national commission on accrediting, any foundation having an established identity with any of the aforementioned educational institutions, any other educational institution confining its solicitation of contributions to its student body, alumni, faculty and trustees, and their families, or a library established under the laws of this State; provided that the annual financial report of the institution or library shall be filed with the superintendent of education, and the director.

(c) Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his use.



(d) Charitable organizations which do not intend to solicit and receive and do not actually raise or receive contributions from the public in excess of \$2,000 during a calendar year or do not receive contributions from more than ten persons during a calendar year, if all of their functions, including fund-raising activities, are carried on by persons who are unpaid for their services and if no part of the assets or income of the charitable organization inures to the benefit of or is paid to any officer or member thereof. Nevertheless, if the contributions raised from the public, whether all is or is not received by any charitable organization during any calendar year, shall be in excess of \$2,000, it shall, within thirty days after the date of receipt register with the director as required by this chapter.

(e) Hospitals which are nonprofit and charitable and are required by law to file financial reports at least annually with the State; provided that a copy of the annual fiscal report is also filed simultaneously with the director.

(f) Organizations which solicit only within the membership of the charitable organization by the members thereof. The term 'membership' shall not include those persons who are granted a membership upon making a contribution as the result of solicitation.

Any charitable organization claiming to be exempt from the registration provisions of this chapter which is about to or does solicit charitable contributions shall submit annually to the director on forms to be prescribed by the director the name, address and purpose of the organization and a statement setting forth the reason for the claim for exemption. If exempted, the director shall issue annually a letter of exemption which may be exhibited to the public. No registration fee shall be required of any exempt organization.

**Section -12. Registration of professional fund-raising counsel and solicitors.** (a) No person shall act as a professional fund-raising counsel or professional solicitor for a charitable organization subject to the provisions of this chapter, unless he has first registered with the director. An application for registration shall be in writing under oath or affirmation in the form prescribed by the director and contain the information as the director may require. The application for registration by professional fund-raising counsel or professional solicitor shall be accompanied by an annual fee in the sum of \$50. A partnership or corporation which is a professional fund-raising counsel or professional solicitor, may register for and pay a single fee on behalf of all its members, officers, agents and employees. However, the names and addresses of all officers, agents and employees of professional fund-raising counsel and all professional solicitors, their officers, agents, servants or employees employed to work under the direction of a professional solicitor shall be listed in the application.

(b) The applicant shall, at the time of making application, file with and have approved by the director a bond in which the applicant shall be the principal obligor in the sum of \$5,000 issued by a surety company authorized to do business in the State and which shall remain in effect so long as a registration is in effect. The bond shall inure to the benefit of the State in the reimbursement for any losses resulting from malfeasance, nonfeasance or misfeasance in the

conduct of solicitation activities. A partnership or corporation which is a professional fund-raising counsel or professional solicitor may file a consolidated bond on behalf of all its members, officers and employees.

(c) Each registration shall be valid throughout the State for a period of one year and may be renewed for additional one-year periods upon written application under oath in the form prescribed by the director and the payment of the fee prescribed herein.

(d) The director shall examine each application. If he finds the application to be in conformity with all the requirements of this chapter and all relevant rules and regulations and the registrant has complied with all the requirements of this chapter and all relevant rules and regulations, he shall approve the registration. Any applicant who is denied registration may, within fifteen days from the date of notification of the denial, request in writing a hearing before the director."

SECTION 2. There is hereby appropriated out of the general revenues of the State of Hawaii, the sum of \$2,000, or so much thereof as may be necessary, for the purposes of this Act.

SECTION 3. This Act shall take effect 90 days after the date of its approval.

(Approved July 8, 1969.)