

A Bill for an Act Relating to Charitable Organizations.

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

SECTION 1. The legislature finds that Act 167, Session Laws of Hawaii 1969, relating to the solicitation of funds from the public, was enacted to protect the public from the unscrupulous obtaining of money or property by persons under the pretense that such money or property would be used for charitable purposes; that the Act presently requires all charitable organizations raising money or contributions in excess of \$4,000 annually, to register as a charitable organization with the State; and that in registering, each charitable organization is required to file a financial statement that has been audited by an independent public accountant.

The legislature further finds that small charitable organizations such as the Parent-Teachers Association and the Little League, which raise funds not much in excess of \$4,000 annually, must presently hire an independent public accountant to audit their financial statements; that this imposes a devastating financial burden which frequently amounts to several thousand dollars; and has therefore left only a small amount of funds for these charitable organizations to pursue their objectives.

The legislature recognizes that the intent in having all financial statements professionally audited is to protect the public interest; that imposing a substantial financial burden on small charitable organizations is clearly not an intent of the requirement; that only those charitable organizations which annually raise large sums of money are able to comply with this requirement; that those organizations which raise in excess of \$10,000 annually should have their financial statements professionally audited; that those charitable organizations which raise more than \$4,000 but not greater than \$10,000 should file unaudited financial statements; and to protect the public interest, these unaudited financial statements may be audited by the State.

The purposes of this Act are to require all charitable organizations raising in excess of \$10,000 annually to file a financial statement that has been audited by an independent public accountant, to require those charitable organizations raising more than \$4,000, but not more than \$10,000, to file unaudited financial statements, and to allow the State to audit these unaudited financial statements if circumstances

indicate that an audit is called for to protect the public.

SECTION 2. Section 467B-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 of 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 salaried executive staff officer.
- (6) A copy of a financial statement (balance sheet and income and expense statement) audited by an independent certified public accountant covering, in a consolidated report, complete information as to all the preceding fiscal year’s fund-raising activities of the charitable organization, showing the kind and amounts of funds raised, costs and expenses incidental thereto, and allocation or disbursement of funds raised whenever the organization raised or received contributions exceeding \$10,000 during the preceding fiscal year; or a copy of an unaudited financial statement (either a compilation or review) covering all the preceding fiscal 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 whenever the charitable organization raised or received contributions in excess of \$4,000 but not exceeding \$10,000, during the preceding fiscal year.
- (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.”

SECTION 3. Section 467B-10, Hawaii Revised Statutes, is amended to read as follows:

“§467B-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) If any registered charitable organization files a financial statement under section 467B-2(6), the director may examine any records kept by the charitable organization as is necessary to protect the public interest. If the director finds that the financial statement contains any false or misleading information, the director may suspend or cancel the charitable organization’s registration.

(c) 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 canceled.

(d) 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.

(e) 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.

(f) 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.

(g) Whenever the director 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 whenever 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 director may bring an action in the name of the State against the charitable organization and its officers, professional fund-raising counsel, 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, professional fund-raising counsel, professional solicitor, or other person from continuing the violation, solicitation, collection, or engaging therein, or doing any acts in furtherance thereof and for such other relief as the court deems appropriate.

(h) The director 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 section 467B-11, and is not an organization entitled to such an exemption.”

SECTION 4. Chapter 467B, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

“§467B-13 Rules. The director may make, amend, or repeal such rules pursuant to chapter 91, as may be deemed proper to effectuate this chapter.”

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 6. This Act shall take effect upon its approval.

(Approved May 26, 1981.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.