

ACT 206

H.B. NO. 1881

A Bill for an Act Relating to the Regulation of Charitable Organizations, Professional Fund-Raising Counsel, and Professional Solicitors.

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

SECTION 1. Chapter 467B, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§467B- Commercial co-venturer’s charitable sales promotions. (a) All charitable sales promotions by a commercial co-venturer shall disclose the name of the commercial co-venturer.

(b) Prior to the commencement of any charitable sales promotion in this State conducted by a commercial co-venturer using the name of a charitable organization, the commercial co-venturer shall obtain the written consent of the charitable organization whose name will be used during the charitable sales promotion.

(c) A final accounting for each charitable sales promotion shall be prepared by the commercial co-venturer following the completion of the promotion. A copy of the final accounting shall be provided to the director not more than twenty days after the copy is requested by the director. A copy of the final accounting shall be

provided to the charitable organization not more than twenty days after the copy is requested by the charitable organization. The final accounting shall be kept by the commercial co-venturer for a period of three years, unless the commercial co-venturer and the charitable organization mutually agree that the accounting should be kept by the charitable organization instead of the commercial co-venturer.

§467B- Enforcement. (a) If any charitable organization, professional fund-raising counsel, or professional solicitor fails to file any statement, report, or other information required to be filed under this chapter, the director may demand that the charitable organization, the professional fund-raising counsel, or the professional solicitor provide the statement, report, or other information not more than twenty days after demanded by the director. This demand may be mailed to the address on file with the department.

(b) Whenever the director has reason to believe that any charitable organization, professional fund-raising counsel, professional solicitor, or other person is operating in violation of this chapter, the director may investigate and bring an action in any court of this State to enjoin the charitable organization, professional fund-raising counsel, professional solicitor, or other person from continuing the violation or doing any acts in furtherance thereof, and for any other relief that the court deems appropriate.

(c) The director may exercise the authority granted by this section against any charitable organization that operates under the guise or pretense of being an organization exempted by section 467B-11, and is not an organization entitled to an exemption.”

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

“**§467B-1 Definitions.** As used in this chapter, unless the context otherwise requires:

“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.];

(1) Any person determined by the Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended; or

(2) Any person who is or holds itself out to be established for any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose, or any person who in any manner employs a charitable appeal as the basis of any solicitation or an appeal that has a tendency to suggest there is a charitable purpose to the solicitation. The term includes each county or other local division of the charitable organization within this State, if the division has the authority and discretion to disburse funds or property otherwise than by transfer to any parent organization. The term does not include any federal, state, or county agency, or political parties and candidates for federal, state, or county office required to file financial information with federal or state election authorities or commissions.

“Charitable purpose” means [any benevolent, philanthropic, patriotic, or eleemosynary purpose.];

- (1) Any purpose described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended; or
- (2) Any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary objective.

“Charitable sales promotion” means an advertising or sales campaign, conducted by a commercial co-venturer, that represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit, in whole or in part, a charitable organization or charitable purpose.

“Commercial co-venturer” means a person who, for profit, is regularly and primarily engaged in trade or commerce other than in connection with soliciting for charitable organizations or charitable purposes, and who conducts charitable sales promotions.

“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] the 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.

“Department” means department of commerce and consumer affairs of the State.

“Director” means the director of commerce and consumer affairs of the State.

“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.]

“Gross receipts” means the total amount of money, contributions, and revenue of any kind received by the charitable organization from all sources, without subtracting any costs or expenses.

“Membership” means membership in a charitable organization [which] that 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] The term does not include those persons who are granted a membership upon making a contribution as a result of solicitation.

“Parent organization” means that part of a charitable organization [which] that 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.

“Percentage compensation” means any compensation, commission, bonus, award, or remuneration, whether direct, indirect, or otherwise, that is calculated by means of a formula, process, evaluation, or other mechanism that considers the amount of funds to be raised or received.

“Person” means any individual, organization, trust, foundation, group, association, partnership, corporation, society, or any combination [of them.] thereof.

“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 the person’s services. [It does not include] The term includes a bona fide

volunteer, salaried officer, or employee of a charitable organization [maintaining a permanent establishment within the State.] if the bona fide volunteer, salaried officer, or employee of the charitable organization receives percentage compensation.

“Professional solicitor” means any person who, for a financial or other consideration, solicits contributions for or on behalf of a charitable organization[, whether the solicitation is performed personally or through the person’s 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 the 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] The term includes a bona fide volunteer, salaried officer, or employee of a charitable organization [maintaining a permanent establishment within the State] if the bona fide volunteer, salaried officer, or employee of the charitable organization receives percentage compensation. The term does not include [and also] an attorney, investment counselor[,] or advisor, financial advisor, or banker, or other person who [advises a]:

- (1) Advises another person to make a contribution to a charitable organization as part of the person’s employment; and
- (2) Does not receive compensation from the charitable organization for that advice .

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

- (1) Any oral or written request.
- (2) The making of any announcement to any organization for the purpose of further dissemination, including announcements to the press, over the radio or television, or by telephone, telegraph, or facsimile, concerning an appeal or campaign by or for any charitable organization or purpose.
- (3) The distribution, circulation, posting, or publishing of any handbill, written advertisement, or other publication that directly or by implication seeks to obtain public support.
- (4) Where the sale or offer or attempted sale, of any advertisement, advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies, or other tangible item in connection with which any appeal is made for any charitable organization or purpose; or where the name of any charitable organization is used or referred to in any appeal as an inducement or reason for making any sale; or where in connection with any sale, any statement is made that the whole or any part of the proceeds from any sale will be used for any charitable purpose or to benefit any charitable organization.
- (5) A request made through the use of receptacles for contributions such as honor boxes, vending machines, wishing wells, contribution boxes, and novelty machines, where a charitable appeal is used or referred to or implied as an inducement or reason to contribute.

A solicitation occurs whether or not the person making the solicitation receives any contribution.”

SECTION 3. Section 467B-2, Hawaii Revised Statutes, is amended to read as follows:

“§467B-2 [Registration of] Filing requirements for charitable organizations. (a) Every charitable organization, except as otherwise provided in this chapter, [which] that intends to solicit contributions within or from the State, [or have funds solicited on its behalf, shall,] prior to any solicitation, shall file a [registration statement with the director upon forms] statement as 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,] chairperson, 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[:] and attachments:

- (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, then 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 of and place [when] where the charitable organization was legally established, and the form of its [organization, and a reference to any determination of its tax-exempt status under the Internal Revenue Code.] organization;
- (5) The name and address of all officers, directors, and trustees, and of 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. The statement shall include the salary or other compensation paid to a professional solicitor or professional fund-raising counsel whether expressed in a fixed dollar amount or as a per cent of the total moneys, funds, pledges, or other property raised or received.] Whether the charitable organization has obtained tax exempt status under state or federal law and, if so, copies of its federal or state tax exemption determination letters. Every charitable organization that files a statement with the department, within thirty days after receipt, shall file with the director copies of any federal or state tax exemption determination letters received after the initial statement filing;

- (7) Whether the charitable organization intends to solicit contributions from the public directly or have the solicitation done on its behalf by others. Where solicitation will be performed by a professional solicitor or commercial co-venturer on behalf of the charitable organization, whether the professional solicitor or commercial co-venturer is authorized by any other governmental authority to solicit contributions and whether the professional solicitor or commercial co-venturer, or any of the officers, directors, or managers of the professional solicitor or commercial co-venturer is or has ever been enjoined from soliciting contributions or had the authority to solicit contributions denied, suspended, or revoked;
- (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[.] or had the authority to solicit contributions denied, suspended, or revoked;
- (9) The general purpose for which the contributions to be solicited shall be used[.];
- (10) The [name] names which the charitable organization has ever used or been known by, any name under which it intends to solicit contributions[.] and, where the name of the charitable organization was not used in the solicitation, the name of every charitable solicitation campaign it has ever used or been known by. Every charitable organization that files a statement with the department shall file with the director at least thirty days prior to the use of the name in any solicitation within or from the State, a notice of any additional names under which it intends to solicit contributions or additional names of charitable solicitation campaigns where the name of the charitable organization will not be used in the solicitation;
- (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[.];
- (13) The accounting method used by the charitable organization, the starting date of the charitable organization's annual accounting period, and the charitable organization's employer identification number; and
- (14) Any other information that the director may require.
 - (b) Each chapter, branch, or affiliate[, except an independent member agency of a federated fund-raising organization,] may [separately];
 - (1)¹ Separately report the information required by this section[.]; or [report]
 - (2) Report the information to its parent organization which shall furnish the information as to its state affiliates, chapters, and branches in a consolidated form to the department.
 - (c) On and after July 1, 1995, every charitable organization that is required to file a statement pursuant to subsection (a), and which receives \$25,000 or more in gross receipts during its preceding annual accounting period, at the time of filing the statement pursuant to subsection (a) and any renewal statements, shall file with the director a copy of financial statements for the preceding annual accounting period. When the organization's gross receipts are not less than \$25,000 but not more than \$100,000 during the preceding annual accounting period, the financial statements shall be reviewed or compiled by an independent certified public accountant. When the organization's gross receipts exceed \$100,000 during its preceding annual accounting period, the financial statements shall be audited in ac-

cordance with generally accepted auditing standards by an independent certified public accountant.

All financial statements shall be in accordance with generally accepted accounting principles except to the extent otherwise prescribed in this subsection or by the director. In addition to those statements required pursuant to generally accepted accounting principles, the financial statements or their related footnotes shall include a disclosure setting forth the amounts recorded as expenses for each professional fund-raising counsel and professional solicitor retained and, where not already required pursuant to generally accepted accounting principles, a statement or schedule of expenses, functionally allocated to expense of program, both management and general, and fundraising. The director may require additional information to be set forth in the financial statements as the director may deem appropriate, prescribe standards for their completion, and change the threshold amounts for the filing of the financial statements pursuant to this subsection.

[(c)] (d) The [registration] forms and other documents prescribed by the director shall be signed by an authorized officer and by the chief fiscal officer of the charitable organization and [shall be] verified by oath.

[(d)] (e) Every charitable organization [which] that submits [an independent registration] a statement or a renewal statement to the department shall pay [an annual registration] a fee in the amount of \$10[.], or in the amount and with any additional sums as may be prescribed by the director. A parent organization filing on behalf of one or more chapters, branches, or affiliates [and a federated fundraising organization filing on behalf of its member agencies] shall pay a single [annual registration] fee for itself and the chapters, branches, or affiliates [or member agencies] included in the [registration] statement.

[(e)] (f) In lieu of [the filing] submitting [of] the [audited] financial statement[,] pursuant to subsection (c), [any] a charitable organization [required to] may file the completed and fully executed Internal Revenue Service Form 990 or Form 990EZ or [its successor form may substitute such form for purposes of this section.] their successor forms, if all schedules, exhibits, and attachments that were filed with the Internal Revenue Service are attached to the signed 990 or 990EZ or successor forms filed with the department with the exception of the Schedule of Contributors, which need not be filed. The Internal Revenue Service document may be used in lieu of the financial statement only to the extent that the information required by subsection (c) is provided by the document.

The signed 990 and 990EZ forms or their successor forms need not be audited. Any amendments to the information contained in the forms shall be filed with the department within thirty days after the amendments are filed with the Internal Revenue Service.

(g) Before July 1 of each year following the year in which the charitable organization first filed the statements required by subsection (a), the charitable organization, prior to any solicitation or operation, shall file a renewal statement in a form prescribed by the director, together with the renewal fee and, where required under subsection (c), a copy of the charitable organization's financial statement for the preceding annual accounting period. The director may prescribe procedures to allow a charitable organization extensions of time to file the statements required by this subsection for a period not more than six months. Except as provided in this subsection, the failure to comply with this section in a timely manner shall be deemed to be a withdrawal of the initial statement and all subsequent renewal statements filed with the department by that charitable organization.

(h) Every charitable organization that has filed a statement as required by subsection (a) shall notify the department of any changes in the information provided under subsection (a)(1), (2), (7), (8) and (11), not more than ten days after the change or occurrence."

SECTION 4. Section 467B-3, Hawaii Revised Statutes, is amended to read as follows:

“**[§467B-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] may also grant exemption from the requirement of filing of annual [registration statement] statements 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] annual statements by the state under whose laws they are organized if the state has a statute similar in substance to this chapter.”

SECTION 5. Section 467B-5, Hawaii Revised Statutes, is amended to read as follows:

“**§467B-5 Records to be kept [by charitable organizations, professional fund-raising counsel, and professional solicitors].** Every charitable organization, professional fund-raising counsel, and professional solicitor subject to this chapter [shall, in accordance with the rules adopted by the director,] shall keep true and accurate records as to its activities [in the State] in a form that will accurately provide support for the information required by this chapter. Upon demand, the records shall be made available to the director for inspection. The records shall be retained for a period of [three] not less than five years [after the end of the period of registration to which they relate].”

SECTION 6. Section 467B-6, Hawaii Revised Statutes, is amended to read as follows:

“**§467B-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 a professional fund-raising counsel and a charitable organization that provides for a percentage compensation shall be filed with the department within ten days after the contract [or written agreement] is [concluded.] signed by the charitable organization.

(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 that provides for a percentage compensation shall be filed with the department [within] not more than ten days after the contract [or arrangement is concluded.] is signed by the charitable organization. The contract [or statement] shall disclose the percentage distribution between the parties to the contract of all funds to be raised or received as a result of the agreed upon solicitation activity. [No solicitation activity shall commence prior to ten days after the date of filing of the contract or statement.]

(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.] The charitable organization, and the professional solicitor

or professional fund-raising counsel shall ensure that all the percentage-based contracts to which they are parties are on file with the department.

(d) On July 1, 1995 and on July 1 of each year thereafter, the charitable organization, and the professional fund-raising counsel or professional solicitor who are or were parties to contracts that provide for percentage compensation, shall file with the department a financial report for each percentage compensation contract pursuant to which solicitations were conducted in or from this State during the preceding twelve-month period. The financial report shall cover the preceding twelve-month period and state, for each contract, the name and address of each party, the gross receipts and revenues collected, and all expenses or payments relating to the contract that were incurred or paid to or by any party. This report shall be co-signed by all parties to the contract. The director may prescribe the form and content of the financial report as the director may deem appropriate. The director may prescribe procedures to allow extensions of time to file the financial report required by this subsection for a period not to exceed six months.

(e) All contracts between professional fund-raising counsel or professional solicitors, and charitable organizations shall be in writing. For the purposes of this section, the term "contract" includes all contracts, agreements, or arrangements between professional fund-raising counsel or professional solicitors, and charitable organizations."

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

"[~~§~~467B-8] Information filed to become public records. [Registration statements and applications,] Statements, 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] government records in the department[,], and [shall] be open to the general public for inspection at [the time] such times and under [the] such conditions as the director may prescribe."

SECTION 8. Section 467B-9, Hawaii Revised Statutes, is amended to read as follows:

"~~§~~467B-9 Prohibited acts. (a) No person [shall], for the purpose of soliciting contributions from persons in the State, shall 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)~~] (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 the latter person's 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)~~] (b) No charitable organization, professional solicitor, or professional [fund raiser] fund-raising counsel 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)~~] (c) 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,] any solicitation or sale, shall 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] on behalf of 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)] (d) No professional solicitor, and no agent, employee, independent contractor, or other person acting on behalf of the professional solicitor, shall solicit in the name of or on behalf of any charitable organization unless [the solicitor]:

- (1) The professional solicitor has obtained the [Has] written authorization of two officers of [such] the organization, [a copy of which shall be filed with the director;] which [the written] authorization shall bear the signature of the professional solicitor and the officers of the charitable organization 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 has filed a copy of the written authorization with the director prior to the solicitation; and
- (2) [Has the authorization with the solicitor when making solicitations and exhibits the same on request to persons solicited or police officers or agents of the department.] The professional solicitor and any person who, for compensation, acts as an agent, employee, independent contractor, or otherwise on behalf of the professional solicitor carries a copy of the authorization while conducting solicitations, and exhibits it on request to persons solicited or police officers or agents of the department.

[(f)] (e) No charitable organization, professional fund-raising counsel, or professional solicitor subject to this chapter[,] shall use or exploit the fact of [registration] filing any statement, report, professional fund-raising counsel contracts, or professional solicitor contracts or other documents or information required to be filed under this chapter or with the department so as to lead the public to believe that [such registration] the filing in any manner constitutes an endorsement or approval by the State of the purposes or goals for the solicitation by the [organization;] charitable organization, professional fund-raising counsel, or professional solicitor; provided that the use of the following statement shall not be deemed a prohibited exploitation: “[Registered] Information regarding this organization has been filed with the State of Hawaii department of commerce and consumer affairs [as required by law]. [Registration] Filing does not imply endorsement or approval of [a] the organization or the public solicitation for contributions.”

[(g)] (f) No person [shall, in soliciting contributions or the sale of goods for a charitable organization or other entity governed by this chapter,], while soliciting, shall impede or obstruct, with the intent to physically inconvenience the general public or any member thereof in any public place or in any place open to the public.

(g) No person shall submit for filing on behalf of any charitable organization, professional fund-raising counsel, or professional solicitor, any statement, financial statement, report, attachment, or other information to be filed with the department that contains information, statements or omissions that are false or misleading.

(h) No person shall solicit contributions from persons in the State or otherwise operate in the State as a charitable organization, an exempt charitable organization, professional fund-raising counsel, professional solicitor, or commercial co-venturer unless the person has filed the information required by this chapter with the department in a timely manner.

(i) No person shall aid, abet, or otherwise permit any persons to solicit contributions from persons in the State unless the person soliciting contributions has complied with the requirements of this chapter.

(j) No person shall fail to file the information and statements required by this chapter or fail to provide any information demanded by the director pursuant to this chapter in a timely manner.

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

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

(m) No person shall receive compensation from a charitable organization for obtaining moneys or bequests for that charitable organization if that person has also received compensation for advising the donor to make the donation; provided that compensation may be received if the person obtains the written consent of the donor to receive compensation from the charitable organization.

(n) No person, after January 1, 1995, shall sell, license, offer to trade, or offer to lease, any list of donors that was obtained from the solicitation of persons to contribute to any charitable organization unless all listed donors have consented to their names and addresses being used in this manner.”

SECTION 9. Section 467B-9.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§467B-9.5]]~~ **Financial statements.** Whenever the director has reasonable grounds to believe that any charitable organization, professional fund-raising counsel, or professional solicitor has engaged in any act or practice constituting a violation of [any provision of] this chapter or any rule or order adopted or issued [or promulgated hereunder], the director may require the charitable organization, professional fund-raising counsel, or professional solicitor to submit to the department a financial statement [certified] prepared in accordance with generally accepted accounting principles by an independent certified public accountant[.], or as otherwise required by the director.”

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

“**§467B-10 [Enforcement and penalties.] 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 demanded by the director, 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 the demanded information is not provided, 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(a)(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 the director's own motion or upon complaint of any person, may, if the director 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, the director 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.] Any person who intentionally or knowingly violates this

chapter, or who intentionally or 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.”

SECTION 11. Section 467B-10.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§467B-10.5] Violation as unfair practice.** Any person who engages in an act or practice [which] that violates [any provision of] this chapter or rules adopted [pursuant thereto] or issued shall have engaged in an unfair or deceptive act or practice in the conduct of a trade or commerce, in violation of section 480-2, and shall be subject to the penalties and remedies provided for such a violation.”

SECTION 12. Section 467B-11, Hawaii Revised Statutes, is amended to read as follows:

“**§467B-11 Exemptions.** [This chapter shall not apply to:] (a) Except as otherwise provided in this chapter, a charitable organization described as follows shall not be required to comply with sections 467B-2 and 467B-6 if the charitable organization complies with subsections (b) and (c):

- (1) A corporation sole or other religious corporation, trust, or organization incorporated or established for religious [purpose, nor to] purposes, any agency or organization incorporated or established for charitable, hospital, or educational purposes and engaged in effectuating one or more of [such] these 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]; and other religious agencies or organizations [which] that 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[.];
- (2) Educational institutions that are recognized by the director 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 director[.];
- (3) 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 the beneficiary’s use[.];
- (4) Charitable organizations [which do not intend to solicit and receive and do not actually raise or receive contributions from the public in excess of \$4,000 during a calendar year or] that 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 \$4,000, it shall, within thirty days after the date of receipt register with the director as required by this chapter.];

- (5) Hospitals [which] that 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] shall be filed simultaneously with the director[.];
- (6) Organizations [which] that solicit only within the membership of the charitable organization by the members thereof. [The] For the purposes of this paragraph, the term "membership" shall not include those persons who are granted a membership upon making a contribution as the result of solicitation[.]
- (7) Any Hawaii or foreign nonprofit corporation that has been on record with the department for at least five years and is in good standing with respect to complying with the laws of this State and provided further all fund-raising activities are carried on by persons who are not in any manner compensated for such services.]; and
- (7) Any charitable organization that received less than \$4,000 in gross receipts during the preceding annual accounting period, and that will receive less than \$4,000 in gross receipts during the current annual accounting period.

(b) Any charitable organization [claiming to be exempt from the registration provisions of this chapter which is about to or does solicit charitable contributions] described in subsection (a)(1) to (6) 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[.], and any other information that the director may require. [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.] If the charitable organization is not exempted, it shall, prior to any solicitation, comply with all requirements of this chapter. The claim for exemption submitted by the charitable organization shall be accompanied by a fee of \$10, or in any amount and with any additional sums as may be prescribed by the director. Persons described in subsection (a)(7) shall not be required to file the claim for exemption, and shall not be required to pay any accompanying fees; provided that in the event more than \$4,000 in gross receipts is received during the current annual accounting period by a charitable organization operating under subsection (a)(7), the organization, not more than thirty days after collecting \$4,000 or more in gross receipts, and prior to any further solicitation, shall file a statement as provided in section 467B-2 or, where appropriate, a claim for exemption under subsection (a)(1) to (6).

(c) Any charitable organization described in subsection (a)(1) to (7), prior to any solicitation, shall register all names used in any solicitation, including, but not limited to, trade names, corporation names, partnership and organization names, and fundraising campaign names.”

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

“[[§467B-12] Registration of] Filing requirements for professional fund-raising counsel and professional solicitors. (a) [No person shall act as a] Every professional fund-raising counsel or professional solicitor [for a charitable organization subject to the provisions of this chapter, unless the person has first

registered with the director. An application for registration], prior to any solicitation, shall file a statement with the department. The statement shall be in writing under oath or affirmation in the form prescribed by the director and shall contain the information as the director may require. The [application for registration] statement by a professional fund-raising counsel or professional solicitor shall be accompanied by [an annual] a fee [in the sum] in the amount of \$50[.], or in the amount and with any additional sums as may be prescribed by the director. [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.] The statement shall list the names, addresses, and social security numbers of all officers, agents, servants, employees, directors, and independent contractors of a professional fund-raising counsel, and the names, addresses, and social security numbers of all officers, agents, servants, employees, directors, and independent contractors of a professional solicitor. Renewal statements shall be filed with the department on or before July 1 of each calendar year in which the professional fund-raising counsel or professional solicitor does business in or from the State and shall be effective until June 30 of the next calendar year. The renewal statement shall be in a form prescribed by the director. A renewal fee of \$50, or in any amount and with any additional sums as may be prescribed by the director, shall accompany the renewal statement.

(b) The professional fund-raising counsel or professional solicitor [applicant shall], at the time of [making application,] each filing, shall file with and have approved by the director a bond in which the applicant [shall be] is the principal obligor in the penal sum of \$5,000 issued [by a surety company authorized to do business in the State] with good and sufficient surety or sureties approved by the director and which shall remain in effect [so long as a registration is in effect] for one year. 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.], conditioned that the applicant, its officers, directors, employees, agents, servants, and independent contractors shall not violate this chapter. A partnership or corporation [which] that 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 the director 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, the director 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.]

(c) The charitable organization may void any agreement or contract for compensation or reimbursement with a professional solicitor or professional fund-raising counsel for that person's failure to comply with this section before or while soliciting persons on behalf of the charitable organization. If the charitable organization voids the agreement or contract, moneys collected by the professional solicitor or professional fund-raising counsel shall be paid to the charitable organization,

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to be held in trust on behalf of those donors who request a refund. The charitable organization shall make best efforts to notify donors of their option of receiving a refund. All moneys not claimed by the donors shall be the sole property of the charitable organization.’

SECTION 14. Section 467B-14, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§467B-14]]~~ **Publication.** The director shall publish annually, in a newspaper of general circulation in the State, a list of all [registered] charitable organizations, professional fund-raising counsel, and professional solicitors[.], that have filed statements with the department.’”

SECTION 15. Section 467B-4, Hawaii Revised Statutes, is repealed.

SECTION 16. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 17. This Act shall take effect on July 1, 1994.

(Approved June 10, 1993.)

Notes

1. Should be underscored.
2. Edited pursuant to HRS §23G-16.5.