

ACT 174

S.B. NO. 3171

A Bill for an Act Relating to Charitable Trusts and Nonprofit Organizations.

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

SECTION 1. Hawaii has more than 5,000 charities and nonprofit organizations that employ 41,000 individuals who provide needed services to Hawaii residents. Hawaii charities have revenues over \$2,000,000,000 and pay over \$1,000,000,000 in wages. According to a study conducted in 2002, local residents made \$430,000,000 worth of cash and in-kind donations in one year to Hawaii and national charities.

However, Hawaii is one of only 11 states that do not require charities to register with a state agency. Nonprofit experts have noted that Hawaii's oversight of charities is one of the weakest in the nation. According to a 2004 survey, Hawaii was ranked last in the number of state positions budgeted for charity oversight and enforcement. New York had 55 budgeted positions, Pennsylvania had 30 positions, and Oregon had nearly 20 positions. Hawaii has a single deputy attorney general who serves on a part-time basis to oversee charities in the state.

Due to the absence of a registration system, the department of the attorney general may only pursue an investigation if an individual complains or questionable conduct is revealed and disclosed to the public. Recent news articles reported a pre-school with an enrollment of three hundred students had \$2,000,000 in annual revenues, paid a top executive \$250,000 annually, made an illegal \$100,000 loan to another officer whose spouse is another executive, and paid \$1,200 per month for two leased luxury cars for its husband and wife management team. New reports have revealed other instances of improper and illegal conduct by charities and leaders.

The legislature finds that a registration system is needed for charities. A registration system will provide the State with valuable information on which nonprofit groups are raising funds, what programs these groups seek to fund, and how these groups are spending collected funds. Registration can help enforcement officials spot red flags, such as questionable transactions or compensation deals, and answer questions from the public. The review of annual filings may also serve as a deterrent to abuse. Before making a contribution, donors could find out if an organization is a legitimate charity and determine if the group has provided the State with information on its finances.

The purpose of this Act is to:

- (1) Require charitable trusts and nonprofits to register and file annual financial reports with the attorney general;

- (2) Provide standards for registration of professional fund raising counsel and professional solicitors, and registration of charitable trusts and nonprofits;
- (3) Authorize the attorney general to conduct investigation on possible violations;
- (4) Prohibit contracting with unregistered solicitors;
- (5) Require submittal of a filing fee based on total revenue of organization; and
- (6) Appropriate funds to staff additional positions.

SECTION 2. Chapter 467B, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

“§467B-A Registration of charitable organizations. (a) Every public benefit corporation domiciled in Hawaii and every charitable organization not exempted by section 467B-C shall register with the department prior to conducting any solicitation or prior to having any solicitation conducted on its behalf by others. Two authorized officers of the charitable organization shall sign the registration form and shall certify that the statements therein are true and correct to the best of their knowledge subject to penalties imposed by section 710-1063. A consolidated application for registration may, at the option of the charitable organization, be submitted by a parent organization for itself and any or all of its related foundations, supporting organizations, chapters, branches, or affiliates in this state.

(b) The attorney general may make available a registration form to assist in the registration by charitable organizations that must register in other states and shall designate the uniform registration statement developed by the National Association of State Charity Officials be used as the registration form under this section.

(c) The attorney general may require that registration forms be filed with the department electronically and may require the use of electronic signatures.

§467B-B Annual financial reports; fiscal records and fees. (a) Every charitable organization required to register pursuant to section 467B-A shall annually file with the department a report for its most recently completed fiscal year. The report shall include a financial statement and other information as the department may require. The charitable organization shall file the report not more than eight months following the close of its fiscal year on or before the date the organization files a Form 990 or 990EZ with the Internal Revenue Service. The report shall be accompanied by a filing fee as prescribed by subsection (d) and shall be signed by two authorized officers of the organization, one of whom shall be the chief fiscal officer of the organization. These officers shall certify that the report is true and correct to the best of their knowledge. The department shall prescribe the form of the report and shall prescribe standards for its completion. The department shall accept, under such conditions as the attorney general may prescribe, a copy or duplicate original of financial statements, reports, or returns filed by the charitable organization with the Internal Revenue Service or another state having requirements similar to the provisions of this section; provided that the attorney general may prescribe the form of the annual financial report for charitable organizations that file the Form 990N with the Internal Revenue Service.

(b) A charitable organization with gross revenue in excess of \$500,000 in the year covered by the report shall include with its annual financial report, an audit report prepared by a certified public accountant; provided that any charitable organization shall include with its annual financial report an audit report prepared by a certified public accountant as a result of a requirement imposed by a governmental authority or a third party. For purpose of this subsection, “gross revenue” does not

include grants or fees from government agencies or revenue derived from funds held in trust for the benefit of the organization.

(c) The department, upon written request and for good cause shown, may grant an extension of time, not to exceed three months, for the filing of the report.

(d) Each charitable organization filing a report required by this section shall pay a filing fee to the department, based on the total amount of its income and receipts during the time covered by the report at the close of the calendar or fiscal year adopted by the charitable organization as follows:

- (1) \$10, if less than \$25,000;
- (2) \$25, if \$25,000 but less than \$50,000;
- (3) \$50, if \$50,000 but less than \$100,000;
- (4) \$100, if \$100,000 but less than \$250,000;
- (5) \$150, if \$250,000 but less than \$500,000;
- (6) \$200, if \$500,000 but less than \$1,000,000;
- (7) \$300, if \$1,000,000 but less than \$2,000,000;
- (8) \$500, if \$2,000,000 but less than \$5,000,000; or
- (9) \$750, if \$5,000,000 or more.

(e) If a return or report required under this section is not filed, taking into account any extension of time for filing, unless it is shown that the failure is due to reasonable cause, a fine of \$20 shall be imposed for each day during which the violation continues; provided that the total amount imposed under this subsection shall not exceed \$1,000. Returns and reports submitted without the proper filing fee shall not be accepted for filing.

(f) Every charitable organization subject to sections 467B-A and 467B-B shall keep true fiscal records that shall be available to the department for inspection upon request. The organization shall retain the records for no less than three years after the end of the fiscal year to which they relate.

§467B-C Charitable organizations exempted from registration and financial disclosure requirements. The following charitable organizations shall not be subject to sections 467B-A and 467B-B, if each organization submits information as the department may require to substantiate an exemption under this section:

- (1) Any duly organized religious corporation, institution, or society;
- (2) Any parent-teacher association or educational institution, the curricula of which in whole or in part are registered or approved by any state or the United States either directly or by acceptance of accreditation by an accrediting body;
- (3) Any nonprofit hospital licensed by the State or any similar provision of the laws of any other state;
- (4) Any governmental unit or instrumentality of any state or the United States;
- (5) Any person who solicits solely for the benefit of organizations described in paragraphs (1) to (4); and
- (6) Any charitable organization that normally receives less than \$25,000 in contributions annually, if the organization does not compensate any person primarily to conduct solicitations.

§467B-D Investigations; subpoenas; court orders. (a) The department, on its own motion or on complaint of any person, may conduct an investigation to determine whether any person has violated or is about to violate any provision of sections 467B-A, 467B-B, and 467B-9.

(b) The attorney general or the attorney general's authorized representative may subpoena documentary material relating to any matter under investigation, issue subpoenas to any person involved in or who may have knowledge of any matter

under investigation, administer an oath or affirmation to any person, and conduct hearings on any matter under investigation.

(c) If any person fails to obey any subpoena issued by the department pursuant to this section, the department, after notice, may apply to the circuit court for the first circuit, State of Hawaii, for a hearing on the application, and after the hearing, the court may issue an order requiring the person to obey the subpoena or any part thereof, together with any other relief as may be appropriate. Any disobedience of any order entered under this section by any court shall be punished as a contempt thereof."

SECTION 3. Section 467B-1, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

"Gross revenue" means income of any kind from all sources, including all amounts received as the result of any solicitation by a professional solicitor.

"Person" means an individual, corporation, limited liability company, association, partnership, trust, foundation, and any other entity, however styled."

2. By amending the definition of "parent organization" to read:

"Parent organization" means that part of a charitable organization that coordinates, supervises, or exercises control over policy, fund raising, and expenditures, or assists or advises one or more related foundations, supporting organizations, chapters, branches, or affiliates of such organization in [the State.] this state."

3. By repealing the definition of "person".

~~["Person" means any individual, organization, trust, foundation, group, association, partnership, corporation, society, or any combination thereof."]~~

SECTION 4. Section 467B-2.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within ninety days after a solicitation campaign or event has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, a professional solicitor shall file with the attorney general a financial report for the campaign, including gross revenue and an itemization of all expenses incurred~~[-]~~ on a form prescribed by the attorney general. This report shall be signed under penalty provided by section 710-1063 by the authorized contracting agent for the professional solicitor and two authorized officials of the charitable organization~~[-]~~ and shall report gross revenue from Hawaii donors and national gross revenue from a solicitation activity or campaign. A professional solicitor shall maintain during each solicitation campaign and for not less than three years after the completion of that campaign the following records, which shall be available for inspection upon demand by the attorney general:

- (1) The date and amount of each contribution received and the name and address of each contributor;
- (2) The name and residence of each employee, agent, or other person involved in the solicitation;
- (3) Records of all revenue received and expenses incurred in the course of the solicitation campaign; and
- (4) The location and account number of each bank or other financial institution account in which the professional solicitor has deposited revenue from the solicitation campaign."

SECTION 5. Section 467B-5.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Prior to the commencement of any charitable sales promotion in this ~~[State]~~ 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. The commercial co-venturer shall file a copy of the written consent with the department not less than ten days prior to the commencement of the charitable sales promotion within this state. An authorized representative of the charitable organization and the commercial co-venturer shall sign the written consent, and the terms of the written consent shall include the following:

- (1) The goods or services to be offered to the public;
- (2) The geographic area where, and the starting and final date when, the offering is to be made;
- (3) The manner in which the name of the charitable organization is to be used, including any representation to be made to the public as to the amount or per cent per unit of goods or services purchased or used that is to benefit the charitable organization;
- (4) A provision for a final accounting on a per unit basis to be given by the commercial co-venturer to the charitable organization and the date when it is to be made; and
- (5) The date when and the manner in which the benefit is to be conferred on the charitable organization.”

SECTION 6. Section 467B-8, Hawaii Revised Statutes, is amended to read as follows:

“§467B-8 Information filed to become public records. Statements, reports, professional fundraising counsel contracts or professional solicitor contracts, and all other documents and information required to be filed under this chapter or by the attorney general shall become government records in the department and be open to the general public for inspection [~~at such times and under such conditions as the attorney general may prescribe.~~] pursuant to chapter 92F; provided that information in any registration statement concerning the residential addresses of any officer or director or that identifies a charitable organization’s financial or banking accounts shall be confidential under chapter 92F.”

SECTION 7. Section 467B-9, Hawaii Revised Statutes, is amended to read as follows:

“§467B-9 Prohibited acts. (a) No person, for the purpose of soliciting contributions from persons in the [State,] 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.

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.

(b) No charitable organization, professional solicitor, or professional fundraising 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.

(c) No person, in connection with any solicitation or sale, shall misrepresent or mislead anyone by any manner, means, practice, or device whatsoever, to believe that the solicitation or sale is being conducted 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.

(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:

- (1) The professional solicitor has obtained the written authorization of two officers of the organization, which 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 attorney general prior to the solicitation; and
- (2) 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.

(e) No charitable organization, professional fundraising counsel, or professional solicitor subject to this chapter shall use or exploit the fact of filing any statement, report, professional fundraising 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 the filing in any manner constitutes an endorsement or approval by the State of the purposes or goals for the solicitation by the charitable organization, professional fundraising counsel, or professional solicitor; provided that the use of the following statement shall not be deemed a prohibited exploitation: "Information regarding this organization has been filed with the State of Hawaii department of the attorney general. Filing does not imply endorsement or approval of the organization or the public solicitation for contributions."

(f) No person, 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 fundraising 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] state or otherwise operate in the [State] state as a charitable organization, an exempt charitable organization, professional fundraising 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] state unless the person soliciting contributions has complied with the requirements of this chapter.

(j) No person shall fail to file the information and registration statement, annual or financial reports, and other statements required by this chapter or fail to provide any information demanded by the attorney general 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 shall act as a professional solicitor if the person, any officer, any person with a controlling interest therein, or any person the professional solicitor employs, engages, or procures to solicit for compensation, has been convicted by any federal or state court of any felony, or of any misdemeanor involving dishonesty or arising from the conduct of a solicitation for a charitable organization or purpose.

(o) No charitable organization shall use the services of an unregistered professional solicitor or professional fundraising counsel."

SECTION 8. Section 467B-9.7, Hawaii Revised Statutes, is amended to read as follows:

"§467B-9.7 Administrative enforcement and penalties. (a) The attorney general may refuse to register~~[- may revoke, or may suspend]~~ or may revoke or suspend the registration of any charitable organization, professional fundraising counsel, or professional solicitor whenever the attorney general finds that a charitable organization, professional fundraising counsel, or professional solicitor, or an agent, servant, or employee thereof:

- (1) Has violated or is operating in violation of this chapter, the rules of the attorney general, or an order issued by the attorney general;
- (2) Has refused or failed, after notice, to produce any records of the organization or to disclose any information required to be disclosed under this chapter or the rules of the attorney general;
- (3) Has made a material false statement in an application, statement, or report required to be filed under this chapter; or
- (4) Has failed to file the financial report required by section 467B-2.5, or filed an incomplete financial report.

(b) When the attorney general finds that the registration of any person may be refused, suspended, or revoked under the terms of subsection (a), the attorney general may:

- (1) Revoke a grant of exemption from any provisions of this chapter;
- (2) Issue an order directing that the person cease ~~[and desist]~~ specified fundraising activities;
- (3) Impose an administrative fine not to exceed \$1,000 for each act or omission that constitutes a violation of this chapter and an additional penalty, not to exceed \$100, for each day during which the violation continues. Registration shall be automatically suspended upon final affirmation of an administrative fine until the fine is paid or until the normal expiration date of the registration. No registration shall be renewed until the fine is paid; or
- (4) Place the registrant on probation for ~~[such]~~ any period of time and subject to ~~[such]~~ any conditions as the attorney general may determine.

(c) Any person aggrieved by an action of the attorney general under this section may request a hearing to review that action in accordance with chapter 91 and rules adopted by the attorney general. Any request for hearing shall be made within ten days after the attorney general has served the person with notice of the action, which notice shall be deemed effective upon mailing.

(d) The attorney general may apply to the circuit court for the first circuit, State of Hawaii, for relief, and the court may issue a temporary injunction or a permanent injunction to restrain violations of this chapter, appoint a receiver, order restitution or an accounting, or grant other relief as may be appropriate to ensure the due application of charitable funds. Proceedings thereon shall be brought in the name of the State.”

SECTION 9. Section 467B-12, Hawaii Revised Statutes, is amended to read as follows:

“§467B-12 Filing requirements for professional fundraising counsel and professional solicitors. (a) Every professional fundraising counsel or professional solicitor, prior to any solicitation, shall register with the department. The registration statement ~~[shall be in the form prescribed by the attorney general and]~~ shall contain the information ~~[as the attorney general may require.]~~ set forth in subsection (e). The registration statement shall be accompanied by a fee in the amount of \$250, or in the amount and with any additional sums as may be prescribed by the attorney general. ~~[The statement shall list the names and addresses of all owners, officers, and directors of a professional fundraising counsel, and the names and addresses of all owners, officers, and directors of a professional solicitor.]~~ Renewal registration statements shall be filed with the department on or before July 1 of each calendar year by each professional fundraising counsel or professional solicitor ~~[and shall be effective until June 30 of the next calendar year]~~. The renewal statement shall ~~[be in a form prescribed by the attorney general.]~~ contain the information set forth in subsection (e). A renewal fee of \$250, or in any amount and with any additional sums as may be prescribed by the attorney general, shall accompany the renewal statement.

(b) ~~[The professional fundraising counsel or]~~ Each professional solicitor, at the time of each filing, shall file with and have approved by the attorney general a bond in which the applicant is the principal obligor in the penal sum of \$25,000 issued with good and sufficient surety or sureties approved by the attorney general and which shall remain in effect for one year. The bond shall inure to the benefit of the State, conditioned that the applicant, its officers, directors, employees, agents, servants, and independent contractors shall not violate this chapter. A partnership or corporation that is a ~~[professional fundraising counsel or]~~ professional solicitor may file a consolidated bond on behalf of all its members, officers, and employees.

(c) The attorney general shall examine each registration statement and supporting document filed by a professional fundraising counsel or professional solicitor and shall determine whether the registration requirements are satisfied. If the attorney general determines that the registration requirements are not satisfied, the attorney general shall notify the professional fundraising counsel or professional solicitor in writing within fifteen business days of its receipt of the registration statement; otherwise the registration statement is deemed to be approved. Within seven business days after receipt of a notification that the registration requirements are not satisfied, the professional fundraising counsel or professional solicitor may request a hearing.

(d) The attorney general may ~~[adopt rules to provide for:~~

~~(1) The extension of filing deadlines;~~

~~(2) The online availability of forms required to be filed;~~

~~(3) The electronic filing of required registration statements, contracts, forms, and reports; and~~

~~(4) The acceptance of electronic signatures.]~~

require that registration and renewal registration, surety bonds, and contracts be filed with the department electronically and may require the use of electronic signatures.

(e) Each registration and renewal registration shall contain:

- (1) The names and addresses of all owners, officers, and directors of a professional fundraising counsel, and the names and addresses of all owners, officers, and directors of a professional solicitor;
- (2) A statement concerning the corporate form of the registrant, whether corporation, limited liability corporation, partnership, or individual;
- (3) A statement whether the registrant has an office in Hawaii and the name and phone number of the person in charge of the office;
- (4) The names and addresses of any individuals supervising any solicitation activity;
- (5) A statement whether the registration has entered into a consent agreement with, or been disciplined by or subject to administrative action by, another governmental agency;
- (6) A statement whether any officer, director, or any person with a controlling interest in the registrant has ever been convicted of a felony or a misdemeanor involving dishonesty in the solicitation for a charitable purpose;
- (7) The date that the registrant began soliciting Hawaii residents on behalf of a charitable organization or providing professional fundraising counsel services; and
- (8) Whether any owners, directors, or officers are related to:
 - (A) Any other officers, directors, owners, or employees of the registrant;
 - (B) Any officer, director, trustee, or employee of a charitable organization under contract with the registrant; and
 - (C) Any vendor or supplier providing goods or services to a charitable organization under contract with the registrant.”

SECTION 10. There is appropriated out of the solicitation of funds for charitable purposes special fund the sum of \$238,725 or so much thereof as may be necessary for fiscal year 2008-2009 for two permanent full-time equivalent (2.00 FTE) deputy attorney general positions, one permanent full-time equivalent (1.00 FTE) auditor position, and one permanent full-time equivalent (1.00 FTE) legal assistant position.

The sum appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 11. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 13. This Act shall take effect on January 1, 2009; provided that:

- (1) Sections 5 through 9 of this Act shall take effect on July 1, 2008; and
- (2) Any charitable organization required to register under this Act shall file the annual financial report with the attorney general as provided in section 467B-B(a), Hawaii Revised Statutes, no later than eight months following the close of its 2008 taxable year, together with the fees prescribed by section 467B-B(d), Hawaii Revised Statutes.

(Approved June 13, 2008.)

Note

1. Edited pursuant to HRS §23G-16.5.