

ACT 61

S.B. NO. 1020

A Bill for an Act Relating to Charitable Solicitation.

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

SECTION 1. Section 467B-1, Hawaii Revised Statutes, is amended by amending the definition of “professional solicitor” to read as follows:

““Professional solicitor” means any person who, for a financial or other consideration, solicits contributions in this State for a charitable organization, or any person with whom the professional solicitor independently contracts to solicit for contributions. A person who is otherwise a professional fundraising counsel shall be deemed a professional solicitor if the person’s compensation is related to the amount of contributions received[-] or has custody or control of contributions received. The term does not include a bona fide volunteer. The term includes a salaried officer or employee of a charitable organization if the salaried officer or employee of the charitable organization receives percentage compensation. The term does not include an attorney, investment counselor or advisor, financial advisor, or banker, or other person who:

- (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.”

SECTION 2. Section 467B-2.1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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.~~”

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

“**§467B-3 Reciprocal agreements.** The attorney general 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 fundraising counsel, ~~[and]~~ professional solicitors~~[-]~~, and commercial co-venturers.”

SECTION 4. Section 467B-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every charitable organization, professional fundraising counsel, ~~[and]~~ professional solicitor, and commercial co-venturer subject to this chapter shall keep true and accurate records as to its activities 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 attorney general for inspection. Except as provided in subsection (b), records shall be retained for a period of not less than ~~[five]~~ three years.”

SECTION 5. Section 467B-5.5, Hawaii Revised Statutes, is amended to read as follows:

“**§467B-5.5 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. 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.

(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 attorney general not more than twenty days after the copy is requested by the attorney general. 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.

(d) A fine of \$20 shall be imposed on a commercial co-venturer who fails to file a written consent as required by subsection (b), unless it is shown that the failure is due to reasonable cause, for each day during which the violation

continues; provided that the total amount imposed under this subsection shall not exceed \$1,000."

SECTION 6. Section 467B-6.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Every charitable organization required to register pursuant to section 467B-2.1 shall annually file with the department a report for its most recently completed fiscal year. If the charitable organization files a Form 990 or 990-EZ with the Internal Revenue Service, the annual report shall be a copy of that Form 990 or 990-EZ. If the registered charitable organization is required to file a Form 990-T with the Internal Revenue Service, the annual report shall include a copy of that Form 990-T. If a charitable organization is not required to file a Form 990 or 990-EZ with the Internal Revenue Service, the annual report shall contain all information prescribed by the department. The charitable organization shall file its annual report not later than the fifteenth day of the fifth month following the close of its fiscal year. A charitable organization that has obtained an extension of time to file a Form 990 or 990-EZ from the Internal Revenue Service may obtain an extension of time to file the annual report with the department, by filing with the department a copy of the Internal Revenue Service's approved extension of time to file. The annual report shall be accompanied by a filing fee as prescribed by subsection (d). The department shall accept, under conditions prescribed by the attorney general, 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 990-N with the Internal Revenue Service, or who are not required to file a Form 990 or 990-EZ with the Internal Revenue Service."

2. By amending subsection (e) to read:

"(e) If a return ~~[or]~~, report, or filing fee required under this section is not filed~~;~~ or paid, 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."

SECTION 7. 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, commercial co-venturer consents, 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 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 and audited financial statements submitted by registered charities shall be confidential under chapter 92F."

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

1. By amending subsection (b) to read:

“(b) No charitable organization, professional solicitor, [ø] professional fundraising counsel, or commercial co-venturer 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.”

2. By amending subsection (e) to read:

“(e) No charitable organization, professional fundraising counsel, [ø] professional solicitor, or commercial co-venturer subject to this chapter shall use or exploit the fact of filing any statement, report, professional fundraising counsel contracts, written consents, 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, [ø] professional solicitor^[s], or commercial co-venturer; 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.””

3. By amending subsection (g) to read:

“(g) No person shall submit for filing on behalf of any charitable organization, professional fundraising counsel, [ø] professional solicitor, or commercial co-venturer, 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.”

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

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

SECTION 10. Section 467B-9.6, Hawaii Revised Statutes, is amended to read as follows:

“**§467B-9.6 Enforcement.** (a) If any charitable organization, professional fundraising counsel, [ø] professional solicitor, or commercial co-venturer fails to file any statement, report, written consent, or other information required to be filed under this chapter, the attorney general may demand that the charitable organization, the professional fundraising counsel, [ø] ~~the~~ professional solicitor, or commercial co-venturer provide the statement, report, written consent, or other information not more than twenty days after demanded by the attorney general. This demand may be mailed to the address on file with the department.

(b) Whenever the attorney general has reason to believe that any charitable organization, professional fundraising counsel, professional solicitor, commercial co-venturer, or other person is operating in violation of this chapter, the

attorney general may investigate and bring an action in any court of this State to enjoin the charitable organization, professional fundraising counsel, professional solicitor, commercial co-venturer, or other person from continuing the violation or doing any acts in furtherance thereof, and for any other relief that the court deems appropriate.”

SECTION 11. Section 467B-11.5, Hawaii Revised Statutes, is amended to read as follows:

“§467B-11.5 Charitable organizations exempted from registration and financial disclosure requirements. The following charitable organizations shall not be subject to sections 467B-2.1 and 467B-6.5, if the organization submits information as the department may require to substantiate an exemption under this section:

- (1) Any duly organized religious corporation, institution, or society that is exempt from filing Form 990 with the Internal Revenue Service pursuant to sections 6033(a)(3)(A)(i) and (iii) and 6033(a)(3)(C)(i) of the Internal Revenue Code, as amended;
- (2) Parent-teacher associations;
- (3) Any educational institution that is licensed or accredited by any of the following licensing or accrediting organizations:
 - (A) Hawaii Association of Independent Schools;
 - (B) Hawaii Council of Private Schools;
 - (C) Western Association of Schools and Colleges;
 - (D) Middle States Association of Colleges and Schools;
 - (E) New England Association of Schools and Colleges;
 - (F) North Central Association of Colleges and Schools;
 - (G) Northwest [~~Association of Schools and Colleges;~~ Commission on Colleges and Universities;
 - (H) Southern Association of Colleges and Schools; or
 - (I) The National Association for the Education of Young Children;

and any organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code expressly authorized by, and having an established identity with, such an educational institution; provided that the organization’s solicitation of contributions is primarily directed to the students, alumni, faculty, and trustees of the institutions and their respective families;

- (4) Any nonprofit hospital licensed by the State or any similar provision of the laws of any other state;
- (5) Any corporation established by an act of the United States Congress that is required by federal law to submit to Congress annual reports, fully audited by the United States Department of Defense, of its activities including itemized accounts of all receipts and expenditures;
- (6) Any agency of this State, another state, or the federal government; and
- (7) Any charitable organization that normally receives less than \$25,000 in contributions annually, if the organization does not employ or compensate a professional solicitor or professional fundraising counsel. For purposes of this paragraph, an organization normally receives less than \$25,000 in contributions annually if, during the immediately preceding three fiscal years, it received, on average, less than \$25,000 in contributions.”

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SECTION 12. Section 467B-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every professional fundraising counsel or professional solicitor, prior to any solicitation, shall register with the department. The registration statement shall contain the information 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. 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. The renewal statement shall 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. If a renewal registration required under this section is not filed, 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.”

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval.

(Approved April 30, 2013.)