

ACT 163

S.B. NO. 2812

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 definitions of “professional fund-raising counsel” or “professional fundraising counsel” and “solicit” and “solicitation” to read as follows:

“Professional fund-raising counsel” or “professional fundraising counsel” means any person who, for compensation, plans, conducts, manages, advises, consults, or prepares material for, or with respect to, the solicitation of contributions in this State for a charitable organization, but who actually solicits no contributions as a part of the person’s services, and who does not employ, procure, or engage any compensated person to solicit contributions. The term shall not include a bona fide volunteer, salaried officer, or employee of a charitable organization[-], or a person if the only services performed by the person are to plan, conduct, manage, advise, consult, or prepare grant or subsidy application materials for a charitable organization.

“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 fac-

- simile, 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[[];[]] and
  - (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. However, the term shall not include the submission of a grant or subsidy proposal or application to a governmental authority or any organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code.”

SECTION 2. Section 467B-1.5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§467B-1.5] Professional solicitors; required disclosures. [A professional solicitor who makes an oral solicitation by telephone, door-to-door, or otherwise shall furnish to each contributor, prior to collecting or attempting to collect any contribution, a written confirmation of the expected contribution, containing the following information clearly and conspicuously:~~

- ~~(1) The full legal name, address, and telephone number of the individual professional solicitor who directly communicated with the contributor; and~~
  - ~~(2) A disclosure that the contribution is not tax deductible, if applicable, or, if the professional solicitor maintains that the contribution is tax deductible in whole or in part, the portion of the contribution that the professional solicitor maintains is tax deductible.]~~
- (a) Every professional solicitor, and every employee or agent thereof, who solicits contributions from a prospective donor or contributor in this State shall at the outset of any oral or written request for a contribution:
- (1) Identify themselves by their true surname and first name, and the name of their employer or the contractor as the case may be, that is compensating the individual making the solicitation;
  - (2) Identify the name of the professional solicitor registered with the department of the attorney general that has contracted with the charitable organization to provide the solicitation services and, if the individual is employed by a subcontractor, the name of the registered subcontractor;
  - (3) Disclose that the person making the oral or written request for a donation is being paid to make such solicitation and the name of

the charitable organization on whose behalf the person making the request is soliciting; and

- (4) Disclose, orally and in writing, the fact that a copy of the professional solicitor's registration data and financial reports are available from the department of the attorney general.

(b) A professional solicitor who makes an oral solicitation by telephone, door-to-door, or otherwise, prior to collecting or attempting to collect any contribution, shall provide a written confirmation of the expected contribution and clearly disclose that the contribution is not tax-deductible, if applicable, or, if the professional solicitor maintains that the contribution is tax-deductible in whole or in part, the portion of the contribution that the professional solicitor maintains is tax-deductible. The written confirmation shall also conspicuously disclose the name and current address of the registered professional solicitor."

SECTION 3. Section 467B-2.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every public benefit corporation domiciled in Hawaii and every charitable organization not exempted by section 467B-11.5 shall register with the department prior to conducting any solicitation of contributions or prior to having any solicitation of contributions 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 central or parent organization that has received a group exemption letter from the Internal Revenue Service may submit 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.] the subordinate organizations covered under the group exemption that are included in the central or parent organization's annual information return to the Internal Revenue Service."

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. The attorney general may require the financial report to be submitted electronically. 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. If a financial report required under this section is not filed in a timely manner, an initial late filing fee of \$100 shall be imposed, and an additional late filing fee of \$20 per day shall be imposed, for each day during which the violation continues; provided that the total fee amount imposed under this subsection shall not exceed \$1,000. The attorney general may waive all or part of the late filing fee imposed by this subsection if there is a reasonable cause for the failure to timely file. The professional solicitor shall provide a copy of the financial report to the charitable organization to which the financial report pertains within ten days of its submission of the report to the attorney general. 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 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[;], which date shall be no more than ninety days after the end of the charitable sales promotion; 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]~~ late filing fee 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.

(e) The written consent required under subsection (b) shall be signed by the authorized representative of the commercial co-venturer and the charitable organization certifying that the statements made therein are true and correct to the best of their knowledge subject to penalties imposed by section 710-1063. The attorney general may require the written consent to be submitted electronically and may require the use of electronic signatures.

(f) The attorney general may issue a cease and desist order whenever the attorney general finds that a commercial co-venturer has engaged in an act or practice that violates this chapter.

(g) When the attorney general finds that a commercial co-venturer has violated or is operating in violation of this chapter, the attorney general may impose an administrative fine not to exceed \$1,000 for each act that constitutes a violation of this chapter and an additional penalty, not to exceed \$100 per day, for each day during which the violation continues. 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.”

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

1. By amending subsections (a) and (b) to read:

“(a) Every registered 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.] The annual report for a charitable organization that files a Form 990 or 990-EZ shall be electronically submitted to the department within ten business days of the date that the organization files the form with the Internal Revenue Service. The annual report for a charitable organization that files a Form 990-N or that is not required to file a Form 990 or 990-EZ shall be electronically submitted to the department no later than the fifteenth day of the fifth month following the close of its fiscal year. An authorized officer or agent of the charitable organization shall sign the annual report and shall certify that the statements therein are true and correct to the best of the officer’s or agent’s knowledge subject to penalties imposed by section 710-1063. 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.] shall provide a copy to the attorney general within twenty days after the copy is requested by the attorney general. 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.

(b) A charitable organization with ~~[gross revenue]~~ contributions in excess of \$500,000 in the year covered by the annual financial report and a charitable organization required to obtain an audit report by a governmental authority or a third party shall include with its annual financial report, an audit report, prepared in accordance with generally accepted accounting principles, by a certified public accountant~~;~~ provided that any charitable organization shall include with its annual financial report an audit report, prepared in accordance with generally accepted accounting principles, by a certified public accountant if required to do so by a governmental authority or a third party. For the 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]."

2. By amending subsections (d) and (e) to read:

"(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 gross revenues 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,]~~ \$0, 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) \$250, if \$1,000,000 but less than \$2,000,000;
- (8) \$350, if \$2,000,000 but less than \$5,000,000; or
- (9) \$600, if \$5,000,000 or more.

(e) If a return, 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]~~ late filing fee 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-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:]~~ an application for an exemption to the department and the department approves the organization's application;

- (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 Commission on Colleges and Universities;
- (H) Southern Association of Colleges and Schools; ~~[or]~~
- (I) The National Association for the Education of Young Children; or
- (J) The Northwest Accreditation Commission for Primary and Secondary Schools;

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~~[-]~~ accredited by one of the foregoing accrediting agencies; 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.

The attorney general may require the application for exemption to be filed electronically with the department and may require the use of electronic signatures."

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved June 29, 2016.)