

ACT 86

H.B. NO. 1028

A Bill for an Act Relating to Charitable Organizations.

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

SECTION 1. Section 28-5.2, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§28-5.2~~]]~~ Protection of charitable assets; attorney general’s authority. (a) The attorney general shall represent the public interest in the protection of charitable assets and may:

- (1) Enforce the application of a charitable asset in accordance with:
 - (A) The law and terms governing the use, management, investment, distribution, and expenditure of the charitable asset; and
 - (B) The charitable purpose of the person holding the asset;
- (2) Act to prevent or remedy:
 - (A) The misapplication, diversion, or waste of a charitable asset; or
 - (B) A breach of fiduciary or other legal duty in the governance, management, or administration of a charitable asset; or

- (3) Commence or intervene in an action to:
- (A) Prevent, remedy, or obtain damages for:
- (i) The misapplication, diversion, or waste of a charitable asset; or
 - (ii) A breach of fiduciary or other legal duty in the governance, management, or administration of a charitable asset; or

(B) Determine that an asset is a charitable asset.

(b) If the attorney general has reason to believe an investigation is necessary to determine whether action is advisable under this section, the attorney general may conduct an investigation, including exercising administrative subpoena power under sections 28-2.5 and 467B-9.3.

(c) This section shall not limit the powers and duties of the attorney general under the laws of this State.

(d) As used in this section¹ “charitable asset” means property that is given, received, or held for a charitable purpose. The term does not include property acquired or held for a for-profit purpose.

(e) As used in this section, “property” includes all interests in real property or tangible or intangible personal property, including cash, remainder interests, land, and conservation or preservation easements or restrictions. The remainder interest in a charitable remainder trust is property held for a charitable purpose, as is the current interest in a charitable lead trust, property held for ten years in a building fund, and property given to a charitable organization subject to a restriction on its use. Property held in a revocable trust that provides a remainder interest for a charitable purpose is not a charitable asset while the settlor is alive because the settlor can revoke or change the interest.”

SECTION 2. Section 467B-2.1, Hawaii Revised Statutes, is amended to read as follows:

“§467B-2.1 Registration of charitable organizations~~]; deactivation.~~ (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]~~ An authorized ~~[officers]~~ officer or agent 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]~~ the officer’s or agent’s 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 for itself and any or all of 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.

(b) Any charitable organization registered in Hawaii or any charitable organization exempted from registration pursuant to section 467B-11.5 that will no longer be conducting any solicitation of contributions or having any solicitation of contributions conducted on its behalf by others and that wishes to be deactivated shall file a request for deactivation with the attorney general in writing. The attorney general shall deactivate the organization after being satisfied that all obligations of the organization under this chapter have been met. Deactivation of a charitable organization shall not deprive the attorney general of jurisdiction over the activities of the charitable organization that occurred while the organization was registered or should have been registered.

~~[(b)]~~ (c) The attorney general may make available a registration and a deactivation form to assist in the registration or deactivation by charitable organizations.

~~[(e)]~~ (d) The attorney general may require that registration or deactivation forms be filed with the department electronically and may require the use of electronic signatures.”

SECTION 3. 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]~~ or within ninety days of 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 from Hawaii donors and national 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~~[-]~~ and may require the use of electronic signatures. This report shall be signed ~~[under penalty provided by section 710-1063]~~ by the professional solicitor or by an authorized [contracting] officer or agent [for] of the professional solicitor [and shall report gross revenue from Hawaii donors and national gross revenue from a solicitation activity or campaign.] who shall certify that the statements therein are true and correct to the best of the solicitor’s, officer’s, or agent’s knowledge subject to penalties imposed by section 710-1063. If a financial report required under this section is not filed in a timely manner, taking into account any extension of time for filing, unless it is shown that the failure is due to reasonable cause, 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 4. Section 467B-6.5, Hawaii Revised Statutes, is amended to read as follows:

“**§467B-6.5 Annual financial reports; fiscal records and fees.** (a) Every registered charitable organization 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, or 990-PF with the Internal Revenue Service, the

annual report shall be a copy of that Form 990 [øf], 990-EZ[-], or 990-PF. 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 [øf], 990-EZ, or 990-PF with the Internal Revenue Service, the annual report shall contain all information prescribed by the department. The annual report for a charitable organization that files a Form 990 [øf], 990-EZ, or 990-PF 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 [øf], 990-EZ, or 990-PF shall be electronically submitted to the department not² 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 [øf], 990-EZ, or 990-PF from the Internal Revenue Service 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 [øf], 990-EZ, or 990-PF with the Internal Revenue Service.

(b) A charitable organization with 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.

~~(e) 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 annual report required by this section.~~

~~(d)~~ (c) 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) \$0, if gross revenue is less than \$25,000;
 - (2) \$25, if gross revenue is at least \$25,000 but less than \$50,000;
 - (3) \$50, if gross revenue is at least \$50,000 but less than \$100,000;
 - (4) \$100, if gross revenue is at least \$100,000 but less than \$250,000;
 - (5) \$150, if gross revenue is at least \$250,000 but less than \$500,000;
 - (6) \$200, if gross revenue is at least \$500,000 but less than \$1,000,000;
 - (7) \$250, if gross revenue is at least \$1,000,000 but less than \$2,000,000;
 - (8) \$350, if gross revenue is at least \$2,000,000 but less than \$5,000,000;
- or
- (9) \$600, if gross revenue is \$5,000,000 or more.

~~(e)~~ (d) 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 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.

~~[(f)]~~ (e) Every charitable organization subject to section 467B-2.1 and this section 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.

~~[(g)]~~ (f) The attorney general may require the annual financial report and audit report required by subsections (a) and (b) to be electronically submitted and to include electronic signatures.”

SECTION 5. 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 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)]~~ section 6033(a)(3)(A)(i) and (iii) and (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~~[:]~~ or their successor organizations:
 - (A) Hawaii Association of Independent Schools;
 - ~~[(B)]~~ ~~Hawaii Council of Private Schools;~~
 - ~~[(C)]~~ (B) Western Association of Schools and Colleges;
 - ~~[(D)]~~ (C) Middle States Association of Colleges and Schools;
 - ~~[(E)]~~ (D) New England Association of Schools and Colleges;
 - ~~[(F)]~~ ~~North Central Association of Colleges and Schools;~~
 - (E) Higher Learning Commission;
 - ~~[(G)]~~ (F) Northwest Commission on Colleges and Universities;
 - ~~[(H)]~~ (G) Southern Association of Colleges and Schools;
 - ~~[(I)]~~ (H) The National Association for the Education of Young Children; or
 - ~~[(J)]~~ ~~The Northwest Accreditation Commission for Primary and Secondary Schools; and any]~~
 - (I) AdvancED;
- (4) Any organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code expressly authorized by, and having an established identity with, an education institution accredited by one of the ~~[foregoing]~~ accrediting agencies[:] as provided in paragraph (3); 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)]~~ (5) Any nonprofit hospital licensed by the State or any similar provision of the laws of any other state;
- ~~[(5)]~~ (6) 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 De-

fense, of its activities including itemized accounts of all receipts and expenditures;

[(6)] (7) Any agency of this State, another state, or the federal government; and

[(7)] (8) 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 fund-raising 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 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2017.

(Approved July 5, 2017.)

Notes

1. Prior to amendment “,” appeared here.
2. Prior to amendment “no” appeared here.