

# S.B. NO. 2669

JAN 25 2010

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## A BILL FOR AN ACT

RELATING TO THE SOLICITATION OF FUNDS FROM THE PUBLIC.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

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

4 "§467B- Service of process; substituted service. (a) A  
5 charitable organization, professional solicitor, or professional  
6 fundraising counsel that is required to be registered under this  
7 chapter and that either has its principal place of business  
8 outside of the State or is organized under the laws of another  
9 state is considered to have irrevocably appointed the department  
10 as its agent for the service of a summons, subpoena, or other  
11 process directed to the charitable organization, professional  
12 fundraising counsel, or professional solicitor, or to a  
13 director, officer, partner, or principal of the charitable  
14 organization, professional fundraising counsel, or professional  
15 solicitor in an investigation, action, or other proceeding  
16 brought under this chapter, or for purpose of service of a  
17 subpoena under section 467B-9.3.

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1        (b) Service under subsection (a) is complete if the  
2 department immediately sends notice of the service and a copy of  
3 the process to the charitable organization, professional  
4 fundraising counsel, or professional solicitor, or to a  
5 director, officer, partner, or principal of the charitable  
6 organization, professional fundraising counsel, or professional  
7 solicitor, or other person to whom it is directed, by registered  
8 mail, return receipt requested, to the last address known to the  
9 department of the charitable organization, professional  
10 fundraising counsel, or professional solicitor or other person  
11 to whom it is directed.

12        (c) A charitable organization, professional fundraising  
13 counsel, or professional solicitor that is required to be  
14 registered under this chapter and that has its principal place  
15 of business within this State may be served with a subpoena,  
16 summons, or other court process by personal service within this  
17 State. If personal service within this State cannot be made,  
18 substituted service therefor may be made by any of the following  
19 methods:

20        (1) The mailing thereof by registered or certified mail to  
21 the last-known place of business, residence, or abode

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1           within or without this State of such person for whom  
2           the subpoena is intended;

3           (2) As to any person other than a natural person, in the  
4           manner provided for service of summons in an action or  
5           suit; or

6           (3) Such service as the court may direct in lieu of  
7           personal service within this State."

8           SECTION 2. Section 467B-6.5, Hawaii Revised Statutes, is  
9 amended by amending subsections (a) and (b) to read as follows:

10           "(a) Every charitable organization required to register  
11 pursuant to section 467B-2.1 shall annually file with the  
12 department a report for its most recently completed fiscal  
13 year. [~~The report shall include a financial statement and other~~  
14 ~~information as the department may require.~~] If the charitable  
15 organization files an IRS Form 990 or 990EZ with the Internal  
16 Revenue Service, the annual report shall be the IRS Form 990 or  
17 990EZ. In the case of an charitable organization that is not  
18 required to file an IRS Form 990 or 990EZ, the annual report  
19 shall contain such information as the department shall  
20 prescribe. The charitable organization shall file the report  
21 not more than [~~eight months~~] the fifteenth day of the fifth  
22 month following the close of its fiscal year [~~on or before the~~

1 ~~date the organization files a Form 990 or 990EZ with the~~  
2 ~~Internal Revenue Service].~~ A charitable organization that has  
3 obtained an extension of time to file the IRS Form 990 or 990EZ  
4 from the Internal Revenue Service may obtain an extension to  
5 file the annual report with the department by filing with the  
6 department a copy of the IRS's approved extension of time to  
7 file. The report shall be accompanied by a filing fee as  
8 prescribed by subsection (d) [~~and shall be signed by two~~  
9 ~~authorized officers of the organization, one of whom shall be~~  
10 ~~the chief fiscal officer of the organization. These officers~~  
11 ~~shall certify that the report is true and correct to the best of~~  
12 ~~their knowledge. The department shall prescribe the form of the~~  
13 ~~report and shall prescribe standards for its completion)]. The  
14 department shall accept, under such conditions as the attorney  
15 general may prescribe, a copy or duplicate original of financial  
16 statements, reports, or returns filed by the charitable  
17 organization with the Internal Revenue Service or another state  
18 having requirements similar to the provisions of this section;  
19 provided that the attorney general may prescribe the form of the  
20 annual financial report for charitable organizations that file  
21 the Form 990N with the Internal Revenue Service.~~

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1 (b) A charitable organization with gross revenue in excess  
2 of \$500,000 in the year covered by the report shall include with  
3 its annual financial report, an audit report, prepared in  
4 accordance with generally accepted accounting principles, by a  
5 certified public accountant; provided that any charitable  
6 organization shall include with its annual financial report an  
7 audit report, prepared in accordance with generally accepted  
8 accounting principles, by a certified public accountant as a  
9 result of a requirement imposed by a governmental authority or a  
10 third party. For purpose of this subsection, "gross revenue"  
11 does not include grants or fees from government agencies or  
12 revenue derived from funds held in trust for the benefit of the  
13 organization."

14 SECTION 3. Section 467B-6.5, Hawaii Revised Statutes, is  
15 amended by amending subsection (e) to read as follows:

16 "(e) If a return [~~or~~], report, or annual fee required  
17 under this section is not filed[~~ed~~] or timely paid taking into  
18 account any extension of time for filing[~~ing~~] or payment, unless  
19 it is shown that the failure is due to reasonable cause, a fine  
20 of \$20 shall be imposed for each day during which the violation  
21 continues; provided that the total amount imposed under this  
22 subsection shall not exceed \$1,000. [~~Returns and reports~~

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1 ~~submitted without the proper filing fee shall not be accepted~~  
2 ~~for filing.] "~~

3 SECTION 4. Section 467B-9.3, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 " ~~[+] §467B-9.3 [+~~ Investigations; subpoenas; court orders.

6 (a) The department, on its own motion or on complaint of any  
7 person, may conduct an investigation to determine whether any  
8 person has violated or is about to violate any provision of  
9 sections 467B-2.1, 467B-6.5, and 467B-9.

10 (b) The attorney general or the attorney general's  
11 authorized representative may subpoena documentary material  
12 relating to any matter under investigation, issue subpoenas to  
13 any person involved in or who may have knowledge of any matter  
14 under investigation, administer an oath or affirmation to any  
15 person, and conduct hearings on any matter under investigation.

16 (c) If any person fails to obey any subpoena issued by the  
17 department pursuant to this section, the department, after  
18 notice, may apply to the circuit court for the first circuit,  
19 State of Hawaii, for a hearing on the application, and after the  
20 hearing, the court may issue an order requiring the person to  
21 obey the subpoena or any part thereof, together with any other  
22 relief as may be appropriate. Any disobedience of any order

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1 entered under this section by any court shall be punished as a  
2 contempt thereof.

3 (d) In any case where the attorney general has authority  
4 to institute a civil action or proceeding in connection with the  
5 enforcement of this chapter, in lieu thereof the attorney  
6 general may accept an assurance of discontinuance of any act or  
7 practice in violation of such law from any person engaged or who  
8 has engaged in such act or practice. Such assurance may  
9 include a stipulation for the voluntary payment by the alleged  
10 violator of the reasonable costs and disbursements incurred by  
11 the attorney general during the course of the attorney general's  
12 investigation. Evidence of a violation of such assurance shall  
13 constitute prima facie proof of violation of the applicable law  
14 in any civil action or proceeding thereafter commenced by the  
15 attorney general."

16 SECTION 5. Section 467B-11.5, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "[+]§467B-11.5[+] Charitable organizations exempted from  
19 registration and financial disclosure requirements. The  
20 following charitable organizations shall not be subject to  
21 sections 467B-2.1 and 467B-6.5, if each organization submits

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1 information as the department may require to substantiate an  
2 exemption under this section:

3 (1) Any duly organized religious corporation, institution,  
4 or society~~[,]~~, that is exempt from filing a Form 990  
5 with the Internal Revenue Service pursuant to sections  
6 6033(a)(2)(A)(i) and (iii) and 6033(a)(2)(C)(i) of the  
7 Internal Revenue Code, as amended;

8 (2) Parent-teacher associations;

9 ~~[(2)]~~ (3) Any [parent-teacher association or] educational  
10 institution[, the curricula of which in whole or in  
11 part are registered or approved by any state or the  
12 United States either directly or by acceptance of  
13 accreditation by an accrediting body.] that is  
14 accredited by any of the following accrediting  
15 organizations:

16 (i) The Hawaii Association of Independent Schools;

17 (ii) The Hawaii Council of Private Schools; or

18 (iii) The Western Association of Schools and Colleges;

19 ~~[(3)]~~ (4) Any nonprofit hospital licensed by the State or  
20 any similar provision of the laws of any other state;

21 ~~[(4)]~~ (5) Any [governmental unit or instrumentality of any  
22 state or the United States] corporation established by



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1           an act of Congress of the United States that is  
2           required by federal law to submit annual reports of  
3           its activities to Congress containing itemized  
4           accounts of all receipts and expenditures after being  
5           fully audited by the United States Department of  
6           Defense;

7           ~~[(5)]~~ (6) Any ~~[person who solicits solely for the benefit~~  
8           ~~of organizations described in paragraphs (1) to (4);]~~  
9           agency of this State, another state, or the federal  
10           government; and

11           ~~[(6)]~~ (7) Any charitable organization that normally  
12           receives less than \$25,000 in contributions annually,  
13           if the organization does not ~~[compensate any person~~  
14           ~~primarily to conduct solicitations.]~~ employ or  
15           compensate a professional solicitor or professional  
16           fundraising counsel."

17           SECTION 6. Statutory material to be repealed is bracketed  
18           and stricken. New statutory material is underscored.

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1 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

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BY REQUEST

**Report Title:**

Charitable Organizations; Solicitation of Funds from the Public.

**Description:**

Amends chapter 467B, Hawaii Revised Statutes, to allow service of process by substitute service, allows the Attorney General to accept assurances of discontinuance, and amends and clarifies the charity registration exemptions, and clarifies the time period for the filing of a charity's annual financial report.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO THE SOLICITATION OF FUNDS FROM THE PUBLIC.

PURPOSE: The purposes of this "housekeeping" bill are to amend chapter 467B, Hawaii Revised Statutes, to provide that: (1) out-of-state charities and professional fundraisers appoint the Attorney General as an agent for service of process for any investigation or proceeding arising under chapter 467B; (2) substituted service of process can be made on Hawaii domiciled charities and professional fundraisers if personal service cannot be effected; (3) a registered charity's annual financial report shall be the organization's IRS Form 990 or 990EZ; (4) a registered charity's audited financial statement shall be prepared in accordance with generally accepted accounting principles; (5) the late fee provided by section 467B-6.5(e), Hawaii Revised Statutes, shall apply to the failure to make the annual payment as well as failure to file records or reports; and (6) the Attorney General may accept an assurance of discontinuance during the course of an investigation of violations of chapter 467B, Hawaii Revised Statutes.

In addition, the bill clarifies the exemptions to the registration requirement for charitable organizations that solicit contributions.

MEANS: To add a new section to chapter 467B, Hawaii Revised Statutes, and amend sections 467B-6.5(a), (b), and (e), 467B-9.3, and 467B-11.5, Hawaii Revised Statutes.

JUSTIFICATION: The appointment of the Attorney General as an agent for service of process will allow the Attorney General to more efficiently service process, including an investigatory subpoena on charities and professional fundraisers domiciled out of state.

The designation of a charity's IRS Form 990 or 990EZ as the charity's annual financial report will provide better clarity in the law for the charitable sector.

Requiring that a charitable organization's audited financial statement be prepared in accordance with generally accepted accounting principles will ensure uniformity in such audit reports.

The amendments to the exemptions to the registration requirement for charitable organizations are necessary to clarify the exemptions for bona fide religious organizations, accredited educational institutions, government instrumentalities, and charities that normally receive less than \$25,000.

Impact on the public: This bill will make the registration and exemption provisions of chapter 467B, Hawaii Revised Statutes, more understandable for charitable organizations that must register.

Impact on the department and other agencies: This bill will allow the Department to more efficiently administer and enforce chapter 467B, Hawaii Revised Statutes.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: ATG 100

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.