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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  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:  
4           "~~§467B-~~ **Service of process; substituted service.** (a) A  
5 charitable organization, professional fundraising counsel, or  
6 professional solicitor that is required to be registered under  
7 this 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, and does not have a registered agent with the department  
10 of commerce and consumer affairs, is considered to have  
11 irrevocably appointed the department as its agent for the  
12 service of a summons, subpoena, or other process directed to the  
13 charitable organization, professional fundraising counsel, or  
14 professional solicitor, or to a director, officer, partner, or  
15 principal of the charitable organization, professional  
16 fundraising counsel, or professional solicitor in an  
17 investigation, action, or other proceeding brought under this

1 chapter, or for purpose of service of a subpoena under section  
2 467B-9.3.

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

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

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1       (1) Registered or certified mail to the last-known place  
2       of business, residence, or abode within or without  
3       this State of the person for whom the subpoena is  
4       intended;

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

8       (3) Service as the court may direct in lieu of personal  
9       service within this State."

10       SECTION 2. Section 467B-6.5, Hawaii Revised Statutes, is  
11 amended as follows:

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

13       "(a) Every charitable organization required to register  
14 pursuant to section 467B-2.1 shall annually file with the  
15 department a report for its most recently completed fiscal  
16 year. [~~The report shall include a financial statement and other~~  
17 ~~information as the department may require.~~] If the charitable  
18 organization files an IRS Form 990 or 990EZ with the Internal  
19 Revenue Service, the annual report shall be the IRS Form 990 or  
20 990EZ. In the case of a charitable organization that is not  
21 required to file an IRS Form 990 or 990EZ, the annual report  
22 shall contain information prescribed by this chapter and by the

1 department, pursuant to chapter 91. The charitable organization  
2 shall file the report not ~~[more]~~ later than ~~[eight months]~~ the  
3 fifteenth day of the fifth month following the close of its  
4 fiscal year ~~[on or before the date the organization files a Form~~  
5 ~~990 or 990EZ with the Internal Revenue Service]~~. A charitable  
6 organization that has obtained an extension of time to file the  
7 IRS Form 990 or 990EZ from the Internal Revenue Service may  
8 obtain an extension to file the annual report with the  
9 department by filing with the department a copy of the IRS's  
10 approved extension of time to file. The report shall be  
11 accompanied by a filing fee as prescribed by subsection (d) ~~[and~~  
12 ~~shall be signed by two authorized officers of the organization,~~  
13 ~~one of whom shall be the chief fiscal officer of the~~  
14 ~~organization. These officers shall certify that the report is~~  
15 ~~true and correct to the best of their knowledge. The department~~  
16 ~~shall prescribe the form of the report and shall prescribe~~  
17 ~~standards for its completion]~~. The department shall accept,  
18 under such conditions as the attorney general may prescribe, a  
19 copy or duplicate original of financial statements, reports, or  
20 returns filed by the charitable organization with the Internal  
21 Revenue Service or another state having requirements similar to  
22 ~~[the provisions of]~~ this section; provided that the attorney

1 general may prescribe the form of the annual financial report  
2 for charitable organizations that file [~~the~~] Form [~~990N~~] 990 or  
3 990EZ Schedule N with the Internal Revenue Service.

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

17 2. By amending subsection (e) to read:

18 "(e) If a return [~~or~~], report, or annual fee required  
19 under this section is not filed[~~]~~ or timely paid, taking into  
20 account any extension of time for filing[~~]~~ or payment, unless  
21 it is shown that the failure is due to reasonable cause, a fine  
22 of \$20 shall be imposed for each day during which the violation

1 continues; provided that the total amount imposed under this  
2 subsection shall not exceed \$1,000. [~~Returns and reports~~  
3 ~~submitted without the proper filing fee shall not be accepted~~  
4 ~~for filing.~~]"

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

7 "~~+~~**§467B-9.3**~~+~~ **Investigations; subpoenas; court orders.**

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

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

18 (c) If any person fails to obey any subpoena issued by the  
19 department pursuant to this section, the department, after  
20 notice, may apply to the circuit court for the first circuit,  
21 State of Hawaii, for a hearing on the application, and after the  
22 hearing, the court may issue an order requiring the person to

1 obey the subpoena or any part thereof, together with any other  
2 relief as may be appropriate. Any disobedience of any order  
3 entered under this section by any court shall be punished as [a]  
4 contempt [~~thereof~~].

5 (d) In any case where the attorney general has authority  
6 to institute a civil action or proceeding in connection with the  
7 enforcement of this chapter, the attorney general may instead  
8 accept an assurance of discontinuance of any act or practice  
9 that violates this chapter from any person engaged or who is or  
10 has engaged in a violation of this chapter. The assurance may  
11 include a stipulation for the voluntary payment by the alleged  
12 violator of the reasonable costs incurred by the attorney  
13 general during the course of the investigation. Evidence of a  
14 violation of an assurance obtained pursuant to this subsection  
15 shall constitute prima facie proof of violation of the  
16 applicable law in any subsequent civil action or proceeding by  
17 the attorney general."

18 SECTION 4. Section 467B-11.5, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "~~{}~~**\$467B-11.5**~~{}~~ **Charitable organizations exempted from**  
21 **registration and financial disclosure requirements.** The  
22 following charitable organizations shall not be subject to

1 sections 467B-2.1 and 467B-6.5, if each organization submits  
2 information as the department may require to substantiate an  
3 exemption under this section:

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

9 (2) Parent-teacher associations;

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

17 (A) The Hawaii Association of Independent Schools;

18 (B) The Hawaii Council of Private Schools;

19 (C) The Western Association of Schools and Colleges;

20 or

21 (D) The National Association for the Education of  
22 Young Children;



- 1        ~~[(3)]~~ (4) Any nonprofit hospital licensed by the State or  
2                    any similar provision of the laws of any other state;
- 3        ~~[(4)]~~ (5) Any ~~[governmental unit or instrumentality of any~~  
4                    ~~state or the United States]~~ corporation established by  
5                    an act of the United States Congress that is required  
6                    by federal law to submit to Congress annual reports,  
7                    fully audited by the United States Department of  
8                    Defense, of its activities including itemized accounts  
9                    of all receipts and expenditures;
- 10       ~~[(5)]~~ (6) Any ~~[person who solicits solely for the benefit~~  
11                    ~~of organizations described in paragraphs (1) to (4);]~~  
12                    agency of this State, another state, or the federal  
13                    government; and
- 14       ~~[(6)]~~ (7) Any charitable organization that normally  
15                    receives less than \$25,000 in contributions annually,  
16                    if the organization does not ~~[compensate any person~~  
17                    ~~primarily to conduct solicitations.]~~ employ or  
18                    compensate a professional solicitor or professional  
19                    fundraising counsel."

20            SECTION 5. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

22

1 SECTION 6. This Act shall take effect upon its approval.

2

**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.  
(SD1)

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