
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 the purpose of service of a subpoena under
2 section 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, has its principal place of
17 business within this State, and does not have a registered agent
18 with the department of commerce and consumer affairs, may be
19 served with a subpoena, summons, or other court process by
20 personal service within this State. If personal service within
21 this State cannot be made, then substituted service may be made
22 by any of the following methods:



- 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 Internal Revenue Service Form 990 or 990EZ
19 with the Internal Revenue Service, then the annual report shall
20 be the Internal Revenue Service Form 990 or 990EZ. In the case
21 of a charitable organization that is not required to file an
22 Internal Revenue Service Form 990 or 990EZ, the annual report



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



1 the Internal Revenue Service or another state having
2 requirements similar to [~~the provisions of~~] this section;
3 provided that the attorney general may prescribe the form of the
4 annual financial report for charitable organizations that file
5 [~~the~~] Form [~~990N~~] 990 or 990EZ Schedule N with the Internal
6 Revenue Service.

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

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

21 "(e) If a return [~~or~~], report, or annual fee required
22 under this section is not filed [~~7~~] or timely paid, taking into



1 account any extension of time for filing ~~[7]~~ or payment, unless
2 it is shown that the failure is due to reasonable cause, then a
3 fine of \$20 shall be imposed for each day during which the
4 violation continues; provided that the total amount imposed
5 under this subsection shall not exceed \$1,000. ~~[Returns and~~
6 ~~reports submitted without the proper filing fee shall not be~~
7 ~~accepted for filing.] "~~

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

10 "[~~+~~]**\$467B-9.3**[~~+~~] **Investigations; subpoenas; court orders.**

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

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

21 (c) If any person fails to obey any subpoena issued by the
22 department pursuant to this section, then the department, after



1 notice, may apply to the circuit court for the first circuit,
2 State of Hawaii, for a hearing on the application, and after the
3 hearing, the court may issue an order requiring the person to
4 obey the subpoena or any part thereof, together with any other
5 relief as may be appropriate. Any disobedience of any order
6 entered under this section by any court shall be punished as [a]
7 contempt [~~thereof~~].

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

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



1 "[+]§467B-11.5[+] Charitable organizations exempted from
2 registration and financial disclosure requirements. The
3 following charitable organizations shall not be subject to
4 sections 467B-2.1 and 467B-6.5, if each organization submits
5 information as the department may require to substantiate an
6 exemption under this section:

7 (1) Any duly organized religious corporation, institution,
8 or society[+] that is exempt from filing an Internal
9 Revenue Service Form 990 with the Internal Revenue
10 Service pursuant to sections 6033(a)(3)(A)(i) and
11 (iii) and 6033(a)(3)(C)(i) of the Internal Revenue
12 Code, as amended;

13 (2) Parent-teacher associations;

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

21 (A) The Hawaii Association of Independent Schools;

22 (B) The Hawaii Council of Private Schools;



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



1 compensate a professional solicitor or professional
2 fundraising counsel."

3 SECTION 5. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

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

6



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.
(SD2)

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