

SB 2669

S.B. NO. 2669

JAN 25 2010

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 [~~e~~], report, or annual fee required
17 under this section is not filed[~~r~~] or timely paid taking into
18 account any extension of time for filing[~~r~~] 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 violation 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.

19

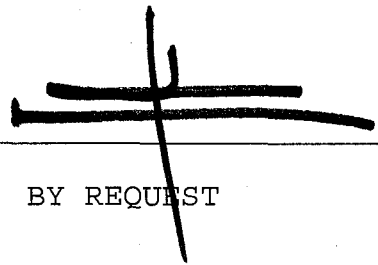
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1 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: _____



4

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.

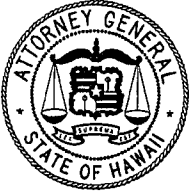
GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: ATG 100

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

S.B. NO. 2669, RELATING TO THE SOLICITATION OF FUNDS FROM THE PUBLIC.

BEFORE THE:

Senate Committee on Commerce and Consumer Protection

DATE: Thursday, February 4, 2010 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Hugh R. Jones, Deputy Attorney General

Chair Baker and Members of the Committee:

The Department of the Attorney General strongly supports this bill. More than 1,200 charitable organizations are registered with the Department as required by chapter 467B, Hawaii Revised Statutes. The purpose of this bill is to strengthen and clarify provisions of the registration law to allow for more efficient enforcement of the law and facilitate compliance by the charitable sector.

A. Service of Process on Out of State Charitable Organizations

Approximately three-fourths of the registered charitable organizations soliciting contributions in Hawaii are domiciled on the mainland. This bill designates the Attorney General as the agent for service of process for non-Hawaii domiciled charitable organizations, professional solicitors, and fundraising counsels, to facilitate the service of subpoenas and other court process. This is a common feature of many other states' registration laws. After the Attorney General accepts service of process for a non-Hawaii domiciled charitable organization, professional solicitor, or fundraising counsel, that process will be sent to the charitable organization, professional solicitor, or fundraising counsel by registered

mail, return receipt requested, at the last known address on file with the Department.

B. Substituted Service on Hawaii Domiciled Charitable Organizations

For similar reasons, this bill allows the Attorney General to serve process on Hawaii-domiciled charitable organizations by substituted service if personal service cannot be accomplished in Hawaii. Substituted service would include registered or certified mail, or such other method as a court would allow, such as service by publication.

C. Clarification of Annual Financial Reports by Registered Charitable Organizations

Hawaii's charitable solicitation law requires each registered charitable organization to annually submit a financial report, and in some cases, an audited financial statement. The present law does not state explicitly what must be included in the financial report. To provide greater clarity and simplify compliance, this bill designates registered charities' Form 990, 990EZ, or 990PF - which charities must already prepare and submit to the IRS every year - as the annual financial report. The bill also clarifies the deadline for the filing of annual financial reports by linking that deadline to the deadline for the filing of Form 990, 990EZ, or 990PF: the fifteenth day of the fifth month following the close of the taxable year. The bill requires charities that have obtained an extension of time to file their Form 990, 990EZ, or 990PF to submit a copy of the IRS-approved extension request to the Department of the Attorney General.

The bill clarifies that audited financial statements submitted to the Department of the Attorney General must be prepared according to generally accepted accounting principles.

D. Enforcement Related Amendments

This bill amends section 467B-6.5, Hawaii Revised Statutes, to also impose the existing fine or late fee for reports or registration statements, on the annual fees assessed to all charitable organizations. Presently, there is no fine for charities that fail to timely pay their annual fee, which are due when charities submit their financial report.

The bill amends section 467B-9.3, Hawaii Revised Statutes, to allow the Attorney General to accept an "Assurance of Discontinuance." This is a common feature of many charitable registration and consumer protection laws, including section 487-12, Hawaii Revised Statutes. As part of any such assurance, the charity could be required to pay the costs of the Attorney General's investigation, if any.

E. Clarification of Exemptions from Registration Requirement

This bill amends section 467B-11.5, Hawaii Revised Statutes, to clarify exemptions to the registration requirements.

1. Religious Organizations

The bill amends the exemption for duly organized religious corporations, organizations, and societies by limiting the exemption to organizations that are not required to file Form 990 or 990EZ with the IRS, such as churches or synagogues. Many other types of religious organizations are required to report to the IRS, and many of these receive substantial sums of money from donors. Requiring religious organizations that are required to report to the IRS to register and annually submit their Form 990 or 990EZ to the Department of the Attorney General will provide for greater accountability by those organizations, and will enable donors to make better informed

giving decisions. Several states' exemptions for religious organizations are similarly limited.

2. *Accredited Educational Organizations*

Currently, the exemption for accredited educational organizations is limited to organizations whose curricula are registered or approved by any state or the federal government. The State of Hawaii does not accredit private schools.¹ This bill replaces the current exemption with an exemption for private schools accredited by certain accrediting bodies. This will provide greater clarity and facilitate compliance.

3. *Government Agencies and Instrumentalities*

This bill clarifies the existing exemption by creating a free-standing exemption for government agencies. It also clarifies the existing exemption for government instrumentalities by limiting it to corporations that are established by act of Congress and that annually report to Congress - for example, the American Red Cross. Other corporations that were created by Congress are not required to annually report to Congress - for example, the National Park Foundation, the United Service Organizations, U.S. Naval Academy Foundation, American Ex-Prisoners of War, AMVETS, Disabled American Veterans, Jewish War Veterans of the United States of America, Paralyzed Veterans of America, and Veterans of Foreign Wars of the United States.

4. *Small Charities*

This bill clarifies the existing exemption for charities that normally receive less than \$25,000 by limiting the exemption to charities that do not employ professional

¹ There is a MOU between the Department of Education (DOE) and the Hawaii Council of Private Schools (HCPS) that allows the HCPS to license private schools but the DOE does not license private schools directly. Public schools are exempt from registration under other provisions of the law.

solicitors or fundraising counsels. The current limitation for charities that do not compensate a person primarily to conduct solicitation is unclear in that it could include salaried staff as well as professional solicitors.

F. Recommended Amendments

It is our understanding that the Hawaii Association of Independent Schools recommends that this bill be amended as follows. We concur with the recommendation.

1. On page 8, line 12, the phrase "accredited by any of the following accrediting organizations" should be amended to read "licensed or accredited by any of the following licensing or accrediting organizations".
2. The National Association for the Education of Young Children should be added as one of the licensing or accrediting organizations recognized in the bill.

We respectfully request that this bill be passed.



The Nature Conservancy
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Testimony of The Nature Conservancy of Hawai'i
Supporting with Amendments S.B. 2669 Relating to the Solicitation
of Funds from the Public
Committee on Commerce and Consumer Protection
Thursday, February 4, 2010, 9:00am, Room 229

The Nature Conservancy of Hawai'i supports the housekeeping provisions of S.B. 2669, which will assist the Attorney General's office with its oversight of charities operating in Hawai'i for the benefit of the people of this state and the charities themselves.

If the Attorney General's office agrees, we would like to request the following amendments to make it clear that the service of process provisions proposed in the bill would not apply to a charity that has a duly appointed agent for service of process registered with the State Department of Commerce and Consumer Affairs:

"§467B- Service of process; substituted service. (a) A charitable organization, professional solicitor, or professional fundraising counsel that is required to be registered under this chapter and that either has its principal place of business outside of the State or is organized under the laws of another state, and that does not have a registered agent with the department of commerce and consumer affairs, is considered to have irrevocably appointed the department as its agent for the service of a summons, subpoena, or other process directed to the charitable organization, professional fundraising counsel, or professional solicitor, or to a director, officer, partner, or principal of the charitable organization, professional fundraising counsel, or professional solicitor in an investigation, action, or other proceeding brought under this chapter, or for purpose of service of a subpoena under section 467B-9.3.

...

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

- (1) The mailing thereof by registered or certified mail to the last-known place of business, residence, or abode within or without this State of such person for whom the subpoena is intended;
- (2) As to any person other than a natural person, in the manner provided for service of summons in an action or suit; or
- (3) Such service as the court may direct in lieu of personal service within this State."

Thank you for the Committee's consideration.

BOARD OF TRUSTEES

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Peter Ho Stanley Hong J. Douglas Ing Mark L. Johnson Dr. Kenneth Kaneshiro Bert A. Kobayashi, Jr.
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February 3, 2010

Chair Rosalyn Baker
Senate Committee on Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, HI 96813

RE: SENATE BILL 2669 RELATING TO THE SOLICITATION OF FUNDS TO THE
PUBLIC

Chair Baker, Vice Chair Ige and Committee members:

The Hawai'i Alliance of Nonprofit Organizations is a statewide, sector-wide professional association for nonprofits. HANO's mission is to unite and strengthen the nonprofit sector as a collective force to improve the quality of life in Hawai'i.

HANO supports the technical changes proposed via SB 2669, which clarifies the language and intent of the law that requires charitable organizations, professional solicitors or fundraising counsel, both within and out of State, to register and file financial documents with the State Attorney General.

In reading this bill, HANO notes that independent schools and PTAs have been exempted from this registration requirement because there are accrediting bodies in existence that provide oversight. I would like to note that many other nonprofits are also monitored by accrediting bodies like the Commission on Accreditation of Rehabilitation Facilities (CARF) or the Joint Commission, which accredit healthcare facilities. If indeed the existence of an independent accreditation suffices to exempt a nonprofit organization from AG registration, couldn't other nonprofits be exempt? At present, the law does not make those distinctions.

To the extent possible, HANO would like to work with the State Attorney General's office to make the nonprofit registration process as simple and understandable as possible to ease the burden of multiple reporting endeavors and compliances on nonprofit organizations.

HANO will continue to partner with the State AG's office to assist in disseminating information to the nonprofit sector to help ensure that all nonprofits that are required to register are compliant.

Thank you for the opportunity to provide written testimony.

Lisa Maruyama
President and CEO