



GOV. MSG. NO. 1140

EXECUTIVE CHAMBERS
HONOLULU

May 4, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on May 4, 2011, the following bill was signed into law:

SB1233 SD2 HD2

RELATING TO THE SOLICITATION OF FUNDS
FROM THE PUBLIC
Act 040 (11)

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii

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 two new sections to be appropriately
3 designated and to read 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, and who does not have a registered agent with the
10 department of commerce and consumer affairs, is considered to
11 have irrevocably appointed the department of the attorney
12 general as its agent for the service of a summons, subpoena, or
13 other process directed to the charitable organization,
14 professional fundraising counsel, or professional solicitor, or
15 to a director, officer, partner, or principal of the charitable
16 organization, professional fundraising counsel, or professional
17 solicitor in an investigation, action, or other proceeding



1 brought under this chapter, or for purpose of service of a
2 subpoena under 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 a
7 director, officer, partner, or principal of the charitable
8 organization, professional fundraising counsel, 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, professional solicitor, or other person to
13 whom it 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 does not have a registered
18 agent with the department of commerce and consumer affairs, may
19 be 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, substituted service may be made by
22 any of the following methods:



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

5 (2) For 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 directed by a court in lieu of personal
9 service within this State.

10 §467B- Administrative enforcement; cease and desist

11 orders. (a) Whenever the attorney general finds that a
12 charitable organization has violated section 467B-2.1, the
13 attorney general may issue, in addition to the remedies
14 prescribed by section 467B-9.7(b), a cease and desist order to
15 the charitable organization.

16 (b) Any person aggrieved by an action of the attorney
17 general under this section may request an administrative hearing
18 to review that action in accordance with chapter 91 and rules
19 adopted by the attorney general. Any request for hearing shall
20 be made within ten days after the attorney general has served
21 the person with notice of the action; provided that notice shall
22 be deemed effective upon mailing."



1 SECTION 2. Section 467B-6.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§~~467B-6.5~~§~~ Annual financial reports; fiscal records
4 and fees. (a) Every charitable organization required to
5 register pursuant to section 467B-2.1 shall annually file with
6 the department a report for its most recently completed fiscal
7 year. ~~[The report shall include a financial statement and other~~
8 ~~information as the department may require.]~~ If the charitable
9 organization files a Form 990 or 990-EZ with the Internal
10 Revenue Service, the annual report shall be a copy of that Form
11 990 or 990-EZ. If the registered charitable organization is
12 required to file a Form 990-T with the Internal Revenue Service,
13 the annual report shall include a copy of that Form 990-T. If a
14 charitable organization is not required to file a Form 990 or
15 990-EZ with the Internal Revenue Service, the annual report
16 shall contain all information prescribed by the department. The
17 charitable organization shall file ~~the~~ its annual report not
18 ~~more~~ later than ~~eight months~~ the fifteenth day of the fifth
19 month following the close of its fiscal year ~~on or before the~~
20 ~~date the organization files a Form 990 or 990EZ with the~~
21 ~~Internal Revenue Service~~]. A charitable organization that has
22 obtained an extension of time to file a Form 990 or 990-EZ from



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

20 (b) A charitable organization with gross revenue in excess
21 of \$500,000 in the year covered by the report shall include with
22 its annual financial report, an audit report, prepared in



1 accordance with generally accepted accounting principles, by a
2 certified public accountant; provided that any charitable
3 organization shall include with its annual financial report an
4 audit report, prepared in accordance with generally accepted
5 accounting principles, by a certified public accountant [~~as a~~
6 ~~result of a requirement imposed~~] if required to do so by a
7 governmental authority or a third party. For the purpose of
8 this subsection, "gross revenue" does not include grants or fees
9 from government agencies or revenue derived from funds held in
10 trust for the benefit of the organization.

11 (c) The department, upon written request and for good
12 cause shown, may grant an extension of time, not to exceed three
13 months, for the filing of the annual report[~~-~~] required by this
14 section.

15 (d) Each charitable organization filing a report required
16 by this section shall pay a filing fee to the department[~~-~~]
17 based on the total amount of its [~~income and receipts~~] gross
18 revenues during the time covered by the report at the close of
19 the calendar or fiscal year adopted by the charitable
20 organization as follows:

21 (1) \$10, if less than \$25,000;

22 (2) \$25, if \$25,000 but less than \$50,000;



- 1 (3) \$50, if \$50,000 but less than \$100,000;
2 (4) \$100, if \$100,000 but less than \$250,000;
3 (5) \$150, if \$250,000 but less than \$500,000;
4 (6) \$200, if \$500,000 but less than \$1,000,000;
5 (7) [~~\$300,~~] \$250, if \$1,000,000 but less than \$2,000,000;
6 (8) [~~\$500,~~] \$350, if \$2,000,000 but less than \$5,000,000;
7 or
8 (9) [~~\$750,~~] \$600, if \$5,000,000 or more.

9 (e) If a return or report required under this section is
10 not filed, taking into account any extension of time for filing,
11 unless it is shown that the failure is due to reasonable cause,
12 a fine of \$20 shall be imposed for each day during which the
13 violation continues; provided that the total amount imposed
14 under this subsection shall not exceed \$1,000. [~~Returns and~~
15 ~~reports submitted without the proper filing fee shall not be~~
16 ~~accepted for filing.~~]

17 (f) Every charitable organization subject to [+]section[+]
18 467B-2.1 and [+]this section[+] shall keep true fiscal records
19 that shall be available to the department for inspection upon
20 request. The organization shall retain the records for no less
21 than three years after the end of the fiscal year to which they
22 relate.



1 (g) The attorney general may require the annual financial
2 report and audit report required by subsections (a) and (b) to
3 be electronically submitted and to include electronic
4 signatures."

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 ~~en~~ upon complaint of
9 any person, may conduct an investigation to determine whether
10 any 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,~~] of the subpoena
2 together with any other relief as may be appropriate. Any
3 disobedience of any order entered under this section by any
4 court shall be punished as [a] 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 the law from any person engaged in or who has
10 engaged in the act or practice. Assurance accepted under this
11 subsection may include a stipulation for the voluntary payment
12 by the alleged violator of reasonable costs and disbursements
13 incurred by the attorney general during the course of the
14 attorney general's investigation. Evidence of a violation of an
15 assurance shall constitute prima facie evidence of a violation
16 of the applicable law in any civil action or proceeding later
17 commenced by the attorney general."

18 SECTION 4. Section 467B-9.7, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) The attorney general may refuse to register [~~or may~~],
21 revoke, or suspend the registration of any charitable
22 organization, professional fundraising counsel, or professional



1 solicitor, or issue a cease and desist order whenever the
2 attorney general finds that a charitable organization,
3 professional fundraising counsel, or professional solicitor, or
4 ~~[an]~~ its agent, servant, or employee ~~[thereof]~~:

- 5 (1) Has violated or is operating in violation of this
6 chapter, the rules of the attorney general, or an
7 order issued by the attorney general;
- 8 (2) Has refused or failed, after notice, to produce any
9 records of the organization or to disclose any
10 information required to be disclosed under this
11 chapter or the rules of the attorney general;
- 12 (3) Has made a material false statement in an application,
13 statement, or report required to be filed under this
14 chapter; or
- 15 (4) Has failed to file the financial report required by
16 section 467B-2.5, or filed an incomplete financial
17 report."

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

20 " ~~[f]§467B-11.5[f]~~ 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] the organization
2 submits information as the department may require to
3 substantiate an exemption under this section:

4 (1) Any duly organized religious corporation, institution,
5 or society[+] that is exempt from filing Form 990 with
6 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) Hawaii Association of Independent Schools;

18 (B) Hawaii Council of Private Schools;

19 (C) Western Association of Schools and Colleges;

20 (D) Middle States Association of Colleges and
21 Schools;

22 (E) New England Association of Schools and Colleges;



- 1 (F) North Central Association of Colleges and
2 Schools;
- 3 (G) Northwest Association of Schools and Colleges;
- 4 (H) Southern Association of Colleges and Schools; or
- 5 (I) The National Association for the Education of
6 Young Children;
- 7 and any organization exempt from taxation under
8 section 501(c)(3) of the Internal Revenue Code
9 expressly authorized by, and having an established
10 identity with, such an educational institution;
11 provided that the organization's solicitation of
12 contributions is primarily directed to the students,
13 alumni, faculty, and trustees of the institutions and
14 their respective families;
- 15 [+3+] (4) Any nonprofit hospital licensed by the State or
16 any similar provision of the laws of any other state;
- 17 [+4+] (5) Any ~~governmental unit or instrumentality of any~~
18 ~~state or the United States;~~ corporation established
19 by an act of the United States Congress that is
20 required by federal law to submit to Congress annual
21 reports, fully audited by the United States Department

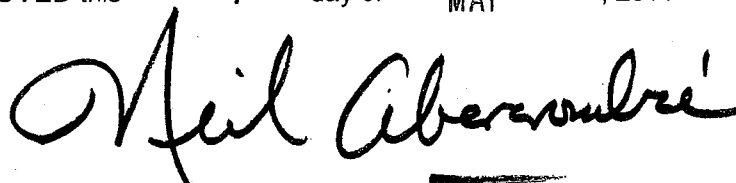


1 of Defense, of its activities including itemized
2 accounts of all receipts and expenditures;
3 [+5+] (6) Any [person who solicits solely for the benefit
4 of organizations described in paragraphs (1) to (4);]
5 agency of this State, another state, or the federal
6 government; and
7 [+6+] (7) Any charitable organization that normally
8 receives less than \$25,000 in contributions annually,
9 if the organization does not [compensate any person
10 primarily to conduct solicitations.] employ or
11 compensate a professional solicitor or professional
12 fundraising counsel."

13 SECTION 6. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

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

APPROVED this 4 day of MAY, 2011



GOVERNOR OF THE STATE OF HAWAII