
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)

5 A charitable organization, professional solicitor, or
6 professional fundraising counsel that is required to be
7 registered under this chapter and that either has its principal
8 place of business outside of the State or is organized under the
9 laws of another state, and who does not have a registered agent
10 with the department of commerce and consumer affairs, is
11 considered to have irrevocably appointed the department as its
12 agent for the service of a summons, subpoena, or other process
13 directed to the charitable organization, professional
14 fundraising counsel, or professional solicitor, or to a
15 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, 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 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 therefor may be
22 made by any of the following methods:



1 (1) The mailing thereof by registered or certified mail to
2 the last-known place of business, residence, or abode
3 within or without this State of such person for whom
4 the subpoena is 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) Such service as the court may direct in lieu of
9 personal service within this State.

10 §467B- Administrative enforcement; cease and desist

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

16 (b) Any person aggrieved by an action of the attorney
17 general under this section may request a hearing to review that
18 action in accordance with chapter 91 and rules adopted by the
19 attorney general. Any request for hearing shall be made within
20 ten days after the attorney general has served the person with
21 notice of the action, which notice shall be deemed effective
22 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 an IRS Form 990 or 990EZ with the Internal
10 Revenue Service, the annual report shall be a copy of that IRS
11 Form 990 or 990EZ. Every registered charitable organization
12 shall also submit to the department a copy of any IRS Form 990T
13 submitted to the Internal Revenue Service. In the case of a
14 charitable organization that is not required to file an IRS Form
15 990 or 990EZ, the annual report shall contain such information
16 as the department shall prescribe. The charitable organization
17 shall file the report not more than ~~[eight months]~~ the fifteenth
18 day of the fifth month following the close of its fiscal year
19 ~~[on or before the date the organization files a Form 990 or~~
20 ~~990EZ with the Internal Revenue Service]~~. A charitable
21 organization that has obtained an extension of time to file the
22 IRS Form 990 or 990EZ from the Internal Revenue Service may



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

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



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

10 (c) The department, upon written request and for good
11 cause shown, may grant an extension of time, not to exceed three
12 months, for the filing of the report.

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

- 19 (1) \$10, if less than \$25,000;
20 (2) \$25, if \$25,000 but less than \$50,000;
21 (3) \$50, if \$50,000 but less than \$100,000;
22 (4) \$100, if \$100,000 but less than \$250,000;



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

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

15 (f) Every charitable organization subject to [+]section[+]
16 467B-2.1 and [+]this section[+] shall keep true fiscal records
17 that shall be available to the department for inspection upon
18 request. The organization shall retain the records for no less
19 than three years after the end of the fiscal year to which they
20 relate.

21 (g) The attorney general may require the annual financial
22 report and audited financial statements required by subsections



1 (a) and (b) to be electronically submitted, including the use of
2 electronic signatures."

3 SECTION 3. 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



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 include
9 a stipulation for the voluntary payment by the alleged violator
10 of the reasonable costs and disbursements incurred by the
11 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 4. Section 467B-9.7, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) The attorney general may refuse to register or may
19 revoke ~~[or]~~, suspend the registration of any charitable
20 organization, professional fundraising counsel, or professional
21 solicitor, or issue a cease and desist order, whenever the
22 attorney general finds that a charitable organization,



1 professional fundraising counsel, or professional solicitor, or
2 an agent, servant, or employee thereof:

3 (1) Has violated or is operating in violation of this
4 chapter, the rules of the attorney general, or an
5 order issued by the attorney general;

6 (2) Has refused or failed, after notice, to produce any
7 records of the organization or to disclose any
8 information required to be disclosed under this
9 chapter or the rules of the attorney general;

10 (3) Has made a material false statement in an application,
11 statement, or report required to be filed under this
12 chapter; or

13 (4) Has failed to file the financial report required by
14 section 467B-2.5, or filed an incomplete financial
15 report."

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



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 an Internal
5 Revenue Service Form 990 with the Internal Revenue
6 Service pursuant to sections 6033(a)(3)(A)(i) and
7 (iii) and 6033(a)(3)(C)(i) of the Internal Revenue
8 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 regional 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 Schools and
21 Colleges;

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



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



1 ~~primarily to conduct solicitations.]~~ employ or
2 compensate a professional solicitor or professional
3 fundraising counsel."

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

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



Report Title:

Charitable Organizations; Solicitation of Funds from the Public

Description:

Allows service of process by substitute service. Allows the Attorney General to accept assurances of discontinuance and to issue cease and desist orders for violations of the law. Amends and clarifies the charity registration exemptions, and clarifies the time period for the filing of a charity's annual financial report. (HB1006 HD1)

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