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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 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 990EZ with the Internal Revenue  
10 Service, the annual report shall be a copy of that Form 990 or  
11 990EZ. If the registered charitable organization is required to  
12 file a Form 990T with the Internal Revenue Service, the annual  
13 report shall include a copy of that Form 990T. If a charitable  
14 organization is not required to file a Form 990 or 990EZ with  
15 the Internal Revenue Service, the annual report shall contain  
16 all information prescribed by the department. The charitable  
17 organization shall file [the] its annual report not [more] later  
18 than [eight months] the fifteenth day of the fifth month  
19 following the close of its fiscal year [on or before the date  
20 the organization files a Form 990 or 990EZ with the Internal  
21 Revenue Service]. A charitable organization that has obtained  
22 an extension of time to file a Form 990 or 990EZ from the



1 Internal Revenue Service may obtain an extension to file the  
2 annual report with the department by filing with the department  
3 a copy of the Internal Revenue Service's approved extension of  
4 time to file. The report shall be accompanied by a filing fee  
5 as prescribed by subsection (d) [~~and shall be signed by two~~  
6 ~~authorized officers of the organization, one of whom shall be~~  
7 ~~the chief fiscal officer of the organization. These officers~~  
8 ~~shall certify that the report is true and correct to the best of~~  
9 ~~their knowledge. The department shall prescribe the form of the~~  
10 ~~report and shall prescribe standards for its completion]. The  
11 department shall accept, under [such] conditions [~~as~~] prescribed  
12 by the attorney general [may prescribe], a copy or duplicate  
13 original of financial statements, reports, or returns filed by  
14 the charitable organization with the Internal Revenue Service or  
15 another state having requirements similar to the provisions of  
16 this section; provided that the attorney general may prescribe  
17 the form of the annual financial report for charitable  
18 organizations that file the Form 990N with the Internal Revenue  
19 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 purpose of this  
8 subsection, "gross revenue" does not include grants or fees from  
9 government agencies or revenue derived from funds held in trust  
10 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 audited financial statements required by subsections  
3 (a) and (b) to be electronically submitted and to include  
4 electronic signatures."

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

7        "[~~f~~]**\$467B-9.3[~~f~~]** **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 the reasonable costs and  
13 disbursements incurred by the attorney general during the course  
14 of the attorney general's investigation. Evidence of a  
15 violation of an assurance shall constitute prima facie proof of  
16 violation of the applicable law in any civil action or  
17 proceeding later 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 "[+]§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] 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 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; or
- 5            (I) The National Association for the Education of
- 6            Young 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.

7



**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 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.  
(SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

