

**CHAPTER 467B**  
**SOLICITATION OF FUNDS FROM THE PUBLIC**

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## Note

Protection of charitable assets; attorney general's authority, see §28-5.2.

" **§467B-1 Definitions.** As used in this chapter, unless the context otherwise requires:

"Charitable organization" means:

- (1) Any person determined by the Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended; or
- (2) Any person who is or holds itself out to be established for any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose, or any person who in any manner employs a charitable appeal as the basis of any solicitation or an appeal that has a tendency to suggest there is a charitable purpose to the solicitation. The term includes each county or other local division of the charitable organization within this State, if the division has the authority and discretion to disburse funds or property otherwise than by transfer to any parent organization. The term does not include any federal, state, or county agency, or political parties and candidates for federal, state, or county office required to file financial information with federal or state election authorities or commissions.

"Charitable purpose" means:

- (1) Any purpose described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended; or
- (2) Any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary objective.

"Charitable sales promotion" means an advertising or sales campaign, conducted by a commercial co-venturer, that represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit, in whole or in part, a charitable organization or charitable purpose.

"Commercial co-venturer" means a person who, for profit, is regularly and primarily engaged in trade or commerce other than in connection with soliciting for charitable organizations or charitable purposes, and who conducts charitable sales promotions.

"Contribution" means the promise or grant of any money or property of any kind or value, including the promise to pay, except payments by members of a charitable organization for membership fees, dues, fines, or assessments, or for services rendered to individual members, if membership in the charitable organization confers a bona fide right, privilege, professional standing, honor, or other direct benefit, other than the right to vote, elect officers, or hold offices, and except money or property received from any governmental authority, or a grant or subsidy from any organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

"Department" means the department of the attorney general.

"Fundraising costs" means those costs incurred in inducing others to make contributions to a charitable organization for which the contributors will receive no direct economic benefit. The term generally includes but is not limited to salaries, rent, the costs of acquiring and maintaining mailing lists, printing, mailing, and all direct and indirect costs of soliciting, as well as the cost of unsolicited merchandise sent to encourage contributions. The term does not include the direct cost of merchandise or goods sold or the direct cost of fundraising dinners, bazaars, shows, circuses, banquets, dinners, theater parties, or any other form of benefit performances.

"Gross receipts" means the total amount of money, contributions, and revenue of any kind received by the charitable organization from all sources, without subtracting any costs or expenses.

"Gross revenue" means income of any kind from all sources, including all amounts received as the result of any solicitation by a professional solicitor.

"Membership" means membership in a charitable organization that provides services and confers a bona fide right, privilege, professional standing, honor or other direct benefit upon its members, in addition to the right to vote, elect officers or hold offices, upon the payment of fees, dues, assessments, etc. The term does not include those persons who are granted a membership upon making a contribution as a result of solicitation.

"Owner" means any person who has a direct or indirect interest in any professional fundraising counsel or professional solicitor.

"Parent organization" means that part of a charitable organization that coordinates, supervises, or exercises control over policy, fundraising, and expenditures, or assists or advises one or more related foundations, supporting

organizations, chapters, branches, or affiliates of such organization in this State.

"Percentage compensation" means any compensation, commission, bonus, award, or remuneration, whether direct, indirect, or otherwise, that is calculated by means of a formula, process, evaluation, or other mechanism that considers the amount of funds to be raised or received.

"Person" means an individual, corporation, limited liability company, association, partnership, trust, foundation, and any other entity, however styled.

"Professional fund-raising counsel" or "professional fundraising counsel" means any person who, for compensation, plans, conducts, manages, advises, consults, or prepares material for, or with respect to, the solicitation of contributions in this State for a charitable organization, but who actually solicits no contributions as a part of the person's services, and who does not employ, procure, or engage any compensated person to solicit contributions. The term shall not include a bona fide volunteer, salaried officer, or employee of a charitable organization, or a person if the only services performed by the person are to plan, conduct, manage, advise, consult, or prepare grant or subsidy application materials for a charitable organization.

"Professional solicitor" means any person who, for a financial or other consideration, solicits contributions in this State for a charitable organization, or any person with whom the professional solicitor independently contracts to solicit for contributions. A person who is otherwise a professional fundraising counsel shall be deemed a professional solicitor if the person's compensation is related to the amount of contributions received or has custody or control of contributions received. The term does not include a bona fide volunteer. The term includes a salaried officer or employee of a charitable organization if the salaried officer or employee of the charitable organization receives percentage compensation. The term does not include an attorney, investment counselor or advisor, financial advisor, or banker, or other person who:

- (1) Advises another person to make a contribution to a charitable organization as part of the person's employment; and
- (2) Does not receive compensation from the charitable organization for that advice.

"Solicit" and "solicitation" mean a request directly or indirectly for money, credit, property, financial assistance, or thing of value on the plea or representation that the money, credit, property, financial assistance, or thing of value, or any portion thereof, will be used for a charitable purpose or to

benefit a charitable organization. These terms shall include the following:

- (1) Any oral or written request;
- (2) The making of any announcement to any organization for the purpose of further dissemination, including announcements to the press, over the radio or television, or by telephone, telegraph, or facsimile, concerning an appeal or campaign by or for any charitable organization or purpose;
- (3) The distribution, circulation, posting, or publishing of any handbill, written advertisement, or other publication that directly or by implication seeks to obtain public support;
- (4) Where the sale or offer or attempted sale, of any advertisement, advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies, or other tangible item in connection with which any appeal is made for any charitable organization or purpose; or where the name of any charitable organization is used or referred to in any appeal as an inducement or reason for making any sale; or where in connection with any sale, any statement is made that the whole or any part of the proceeds from any sale will be used for any charitable purpose or to benefit any charitable organization; and
- (5) A request made through the use of receptacles for contributions such as honor boxes, vending machines, wishing wells, contribution boxes, and novelty machines, where a charitable appeal is used or referred to or implied as an inducement or reason to contribute.

A solicitation occurs whether or not the person making the solicitation receives any contribution. However, the term shall not include the submission of a grant or subsidy proposal or application to a governmental authority or any organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code. [L 1969, c 167, pt of §1; am L 1982, c 204, §8; am L 1983, c 124, §17; gen ch 1985; am L 1990, c 129, §3; am L 1993, c 206, §2; am L 2004, c 93, §3; am L 2006, c 168, §2; am L 2008, c 174, §3; am L 2013, c 61, §1; am L 2016, c 163, §1]

" **§467B-1.5 Professional solicitors; required disclosures.**

(a) Every professional solicitor, and every employee or agent thereof, who solicits contributions from a prospective donor or contributor in this State shall at the outset of any oral or written request for a contribution:

- (1) Identify themselves by their true surname and first name, and the name of their employer or the contractor as the case may be, that is compensating the individual making the solicitation;
- (2) Identify the name of the professional solicitor registered with the department of the attorney general that has contracted with the charitable organization to provide the solicitation services and, if the individual is employed by a subcontractor, the name of the registered subcontractor;
- (3) Disclose that the person making the oral or written request for a donation is being paid to make such solicitation and the name of the charitable organization on whose behalf the person making the request is soliciting; and
- (4) Disclose, orally and in writing, the fact that a copy of the professional solicitor's registration data and financial reports are available from the department of the attorney general.

(b) A professional solicitor who makes an oral solicitation by telephone, door-to-door, or otherwise, prior to collecting or attempting to collect any contribution, shall provide a written confirmation of the expected contribution and clearly disclose that the contribution is not tax-deductible, if applicable, or, if the professional solicitor maintains that the contribution is tax-deductible in whole or in part, the portion of the contribution that the professional solicitor maintains is tax-deductible. The written confirmation shall also conspicuously disclose the name and current address of the registered professional solicitor. [L 2006, c 168, §1; am L 2016, c 163, §2]

" **§467B-2 REPEALED.** L 1996, c 120, §2.

" **§467B-2.1 Registration of charitable organizations.** (a) Every public benefit corporation domiciled in Hawaii and every charitable organization not exempted by section 467B-11.5 shall register with the department prior to conducting any solicitation of contributions or prior to having any solicitation of contributions conducted on its behalf by others. Two authorized officers of the charitable organization shall sign the registration form and shall certify that the statements therein are true and correct to the best of their knowledge subject to penalties imposed by section 710-1063. A central or parent organization that has received a group exemption letter from the Internal Revenue Service may submit a consolidated application for registration for itself and any or all of the

subordinate organizations covered under the group exemption that are included in the central or parent organization's annual information return to the Internal Revenue Service.

(b) The attorney general may make available a registration form to assist in the registration by charitable organizations.

(c) The attorney general may require that registration forms be filed with the department electronically and may require the use of electronic signatures. [L 2008, c 174, pt of §2; am L 2013, c 61, §2; am L 2016, c 163, §3]

" **§467B-2.5 Professional solicitor financial reports; contribution account.** (a) Within ninety days after a solicitation campaign or event has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, a professional solicitor shall file with the attorney general a financial report for the campaign, including gross revenue and an itemization of all expenses incurred on a form prescribed by the attorney general. The attorney general may require the financial report to be submitted electronically. This report shall be signed under penalty provided by section 710-1063 by the authorized contracting agent for the professional solicitor and shall report gross revenue from Hawaii donors and national gross revenue from a solicitation activity or campaign. If a financial report required under this section is not filed in a timely manner, an initial late filing fee of \$100 shall be imposed, and an additional late filing fee of \$20 per day shall be imposed, for each day during which the violation continues; provided that the total fee amount imposed under this subsection shall not exceed \$1,000. The attorney general may waive all or part of the late filing fee imposed by this subsection if there is a reasonable cause for the failure to timely file. The professional solicitor shall provide a copy of the financial report to the charitable organization to which the financial report pertains within ten days of its submission of the report to the attorney general. A professional solicitor shall maintain during each solicitation campaign and for not less than three years after the completion of that campaign the following records, which shall be available for inspection upon demand by the attorney general:

- (1) The date and amount of each contribution received and the name and address of each contributor;
- (2) The name and residence of each employee, agent, or other person involved in the solicitation;
- (3) Records of all revenue received and expenses incurred in the course of the solicitation campaign; and

(4) The location and account number of each bank or other financial institution account in which the professional solicitor has deposited revenue from the solicitation campaign.

(b) Any material change in any information filed with the attorney general pursuant to this section shall be reported in writing by the professional solicitor to the attorney general not more than seven days after the change occurs.

(c) Each contribution in the control or custody of the professional solicitor, in its entirety and within five days of its receipt, shall be deposited in an account at a bank or other federally insured financial institution, which shall be in the name of the charitable organization. The charitable organization shall maintain and administer the account and shall have sole control of all withdrawals. [L 2004, c 93, pt of §1; am L 2006, c 168, §3; am L 2008, c 174, §4; am L 2016, c 163, §4]

" **§467B-3 Reciprocal agreements.** The attorney general may enter into a reciprocal agreement with the appropriate authority of another state for the purpose of exchanging information with respect to charitable organizations, professional fundraising counsel, professional solicitors, and commercial co-venturers. [L 1969, c 167, pt of §1; am L 1993, c 206, §4; am L 1996, c 120, §1; am L 2004, c 93, §4; am L 2013, c 61, §3]

" **§467B-4 REPEALED.** L 1993, c 206, §15.

" **§467B-5 Records to be kept.** (a) Every charitable organization, professional fundraising counsel, professional solicitor, and commercial co-venturer subject to this chapter shall keep true and accurate records as to its activities in a form that will accurately provide support for the information required by this chapter. Upon demand, the records shall be made available to the attorney general for inspection. Except as provided in subsection (b), records shall be retained for a period of not less than three years.

(b) If a professional solicitor sells tickets to an event and represents that tickets will be donated for use by another, the professional solicitor, for not less than three years after the completion of such event, shall maintain the following records, which shall be available for inspection upon demand by the attorney general:

- (1) The number of tickets purchased and donated by each contributor; and
- (2) The name and address of all organizations receiving donated tickets for use by others, including the



number of tickets received by each organization. [L 1969, c 167, pt of §1; am L 1971, c 162, §3; am L 1990, c 129, §4; am L 1993, c 206, §5; am L 2004, c 93, §5; am L 2013, c 61, §4]

" **§467B-5.5 Commercial co-venturer's charitable sales promotions.** (a) All charitable sales promotions by a commercial co-venturer shall disclose the name of the commercial co-venturer.

(b) Prior to the commencement of any charitable sales promotion in this State conducted by a commercial co-venturer using the name of a charitable organization, the commercial co-venturer shall obtain the written consent of the charitable organization whose name will be used during the charitable sales promotion. The commercial co-venturer shall file a copy of the written consent with the department not less than ten days prior to the commencement of the charitable sales promotion within this State. An authorized representative of the charitable organization and the commercial co-venturer shall sign the written consent, and the terms of the written consent shall include the following:

- (1) The goods or services to be offered to the public;
- (2) The geographic area where, and the starting and final date when, the offering is to be made;
- (3) The manner in which the name of the charitable organization is to be used, including any representation to be made to the public as to the amount or per cent per unit of goods or services purchased or used that is to benefit the charitable organization;
- (4) A provision for a final accounting on a per unit basis to be given by the commercial co-venturer to the charitable organization and the date when it is to be made, which date shall be no more than ninety days after the end of the charitable sales promotion; and
- (5) The date when and the manner in which the benefit is to be conferred on the charitable organization.

(c) A final accounting for each charitable sales promotion shall be prepared by the commercial co-venturer following the completion of the promotion. A copy of the final accounting shall be provided to the attorney general not more than twenty days after the copy is requested by the attorney general. The final accounting shall be kept by the commercial co-venturer for a period of three years, unless the commercial co-venturer and the charitable organization mutually agree that the accounting should be kept by the charitable organization instead of the commercial co-venturer.

(d) A late filing fee of \$20 shall be imposed on a commercial co-venturer who fails to file a written consent as required by subsection (b), unless it is shown that the failure is due to reasonable cause, for each day during which the violation continues; provided that the total amount imposed under this subsection shall not exceed \$1,000.

(e) The written consent required under subsection (b) shall be signed by the authorized representative of the commercial co-venturer and the charitable organization certifying that the statements made therein are true and correct to the best of their knowledge subject to penalties imposed by section 710-1063. The attorney general may require the written consent to be submitted electronically and may require the use of electronic signatures.

(f) The attorney general may issue a cease and desist order whenever the attorney general finds that a commercial co-venturer has engaged in an act or practice that violates this chapter.

(g) When the attorney general finds that a commercial co-venturer has violated or is operating in violation of this chapter, the attorney general may impose an administrative fine not to exceed \$1,000 for each act that constitutes a violation of this chapter and an additional penalty, not to exceed \$100 per day, for each day during which the violation continues. Any person aggrieved by an action of the attorney general under this section may request a hearing to review that action in accordance with chapter 91 and rules adopted by the attorney general. Any request for hearing shall be made within ten days after the attorney general has served the person with notice of the action, which notice shall be deemed effective upon mailing. [L 1993, c 206, pt of §1; am L 2004, c 93, §6; am L 2008, c 174, §5; am L 2013, c 61, §5; am L 2016, c 163, §5]

" **§467B-6 REPEALED.** L 2004, c 93, §§14, 19.

" **§467B-6.5 Annual financial reports; fiscal records and fees.** (a) Every registered charitable organization shall annually file with the department a report for its most recently completed fiscal year. If the charitable organization files a Form 990 or 990-EZ with the Internal Revenue Service, the annual report shall be a copy of that Form 990 or 990-EZ. If the registered charitable organization is required to file a Form 990-T with the Internal Revenue Service, the annual report shall include a copy of that Form 990-T. If a charitable organization is not required to file a Form 990 or 990-EZ with the Internal Revenue Service, the annual report shall contain all information prescribed by the department. The annual report for a

charitable organization that files a Form 990 or 990-EZ shall be electronically submitted to the department within ten business days of the date that the organization files the form with the Internal Revenue Service. The annual report for a charitable organization that files a Form 990-N or that is not required to file a Form 990 or 990-EZ shall be electronically submitted to the department no later than the fifteenth day of the fifth month following the close of its fiscal year. An authorized officer or agent of the charitable organization shall sign the annual report and shall certify that the statements therein are true and correct to the best of the officer's or agent's knowledge subject to penalties imposed by section 710-1063. A charitable organization that has obtained an extension of time to file a Form 990 or 990-EZ from the Internal Revenue Service shall provide a copy to the attorney general within twenty days after the copy is requested by the attorney general. The annual report shall be accompanied by a filing fee as prescribed by subsection (d). The department shall accept, under conditions prescribed by the attorney general, a copy or duplicate original of financial statements, reports, or returns filed by the charitable organization with the Internal Revenue Service or another state having requirements similar to the provisions of this section; provided that the attorney general may prescribe the form of the annual financial report for charitable organizations that file the Form 990-N with the Internal Revenue Service, or who are not required to file a Form 990 or 990-EZ with the Internal Revenue Service.

(b) A charitable organization with contributions in excess of \$500,000 in the year covered by the annual financial report and a charitable organization required to obtain an audit report by a governmental authority or a third party shall include with its annual financial report, an audit report, prepared in accordance with generally accepted accounting principles, by a certified public accountant.

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

(d) Each charitable organization filing a report required by this section shall pay a filing fee to the department based on the total amount of its gross revenues during the time covered by the report at the close of the calendar or fiscal year adopted by the charitable organization as follows:

- (1) \$0, if less than \$25,000;
- (2) \$25, if \$25,000 but less than \$50,000;
- (3) \$50, if \$50,000 but less than \$100,000;
- (4) \$100, if \$100,000 but less than \$250,000;

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

(e) If a return, report, or filing fee required under this section is not filed or paid, taking into account any extension of time for filing, unless it is shown that the failure is due to reasonable cause, a late filing fee of \$20 shall be imposed for each day during which the violation continues; provided that the total amount imposed under this subsection shall not exceed \$1,000.

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

(g) The attorney general may require the annual financial report and audit report required by subsections (a) and (b) to be electronically submitted and to include electronic signatures. [L 2008, c 174, pt of §2; am L 2011, c 40, §2; am L 2013, c 61, §6; am L 2016, c 163, §6]

" **§467B-7 REPEALED.** L 1985, c 260, §2.

" **§467B-8 Information filed to become public records.** Statements, reports, professional fundraising counsel contracts or professional solicitor contracts, commercial co-venturer consents, and all other documents and information required to be filed under this chapter or by the attorney general shall become government records in the department and be open to the general public for inspection pursuant to chapter 92F; provided that information in any registration statement concerning the residential addresses of any officer or director or that identifies a charitable organization's financial or banking accounts and audited financial statements submitted by registered charities shall be confidential under chapter 92F. [L 1969, c 167, pt of §1; am L 1993, c 206, §7; am L 2004, c 93, §7; am L 2008, c 174, §6; am L 2013, c 61, §7]

" **§467B-9 Prohibited acts.** (a) No person, for the purpose of soliciting contributions from persons in the State, shall use the name of any other person except that of an officer, director, or trustee of the charitable organization by or for which contributions are solicited, without the written consent of the other persons.

A person shall be deemed to have used the name of another person for the purpose of soliciting contributions if the latter person's name is listed on any stationery, advertisement, brochure, or correspondence in or by which a contribution is solicited by or on behalf of a charitable organization or the latter person's name is listed or referred to in connection with a request for a contribution as one who has contributed to, sponsored, or endorsed the charitable organization or its activities.

(b) No charitable organization, professional solicitor, professional fundraising counsel, or commercial co-venturer soliciting contributions shall use a name, symbol, or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public.

(c) No person, in connection with any solicitation or sale, shall misrepresent or mislead anyone by any manner, means, practice, or device whatsoever, to believe that the solicitation or sale is being conducted on behalf of a charitable organization or that the proceeds of the solicitation or sale will be used for charitable purposes, if that is not the fact.

(d) No professional solicitor, and no agent, employee, independent contractor, or other person acting on behalf of the professional solicitor, shall solicit in the name of or on behalf of any charitable organization unless:

- (1) The professional solicitor has obtained the written authorization of two officers of the organization, which authorization shall bear the signature of the professional solicitor and the officers of the charitable organization and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date of issuance, and has filed a copy of the written authorization with the attorney general prior to the solicitation; and
- (2) The professional solicitor and any person who, for compensation, acts as an agent, employee, independent contractor, or otherwise on behalf of the professional solicitor carries a copy of the authorization while conducting solicitations, and exhibits it on request to persons solicited or police officers or agents of the department.

(e) No charitable organization, professional fundraising counsel, professional solicitor, or commercial co-venturer subject to this chapter shall use or exploit the fact of filing any statement, report, professional fundraising counsel contracts, written consents, or professional solicitor contracts or other documents or information required to be filed under

this chapter or with the department so as to lead the public to believe that the filing in any manner constitutes an endorsement or approval by the State of the purposes or goals for the solicitation by the charitable organization, professional fundraising counsel, professional solicitor, or commercial co-venturer; provided that the use of the following statement shall not be deemed a prohibited exploitation: "Information regarding this organization has been filed with the State of Hawaii department of the attorney general. Filing does not imply endorsement or approval of the organization or the public solicitation for contributions."

(f) No person, while soliciting, shall impede or obstruct, with the intent to physically inconvenience the general public or any member thereof in any public place or in any place open to the public.

(g) No person shall submit for filing on behalf of any charitable organization, professional fundraising counsel, professional solicitor, or commercial co-venturer, any statement, financial statement, report, attachment, or other information to be filed with the department that contains information, statements, or omissions that are false or misleading.

(h) No person shall solicit contributions from persons in the State or otherwise operate in the State as a charitable organization, an exempt charitable organization, professional fundraising counsel, professional solicitor, or commercial co-venturer unless the person has filed the information required by this chapter with the department in a timely manner.

(i) No person shall aid, abet, or otherwise permit any persons to solicit contributions from persons in the State unless the person soliciting contributions has complied with the requirements of this chapter.

(j) No person shall fail to file the information and registration statement, annual or financial reports, and other statements required by this chapter or fail to provide any information demanded by the attorney general pursuant to this chapter in a timely manner.

(k) No person shall employ in any solicitation or collection of contributions for a charitable organization, any device, scheme, or artifice to defraud or obtain money or property by means of any false, deceptive, or misleading pretense, representation, or promise.

(l) No person, in the course of any solicitation, shall represent that funds collected will be used for a particular charitable purpose, or particular charitable purposes, if the funds solicited are not used for the represented purposes.

(m) No person shall receive compensation from a charitable organization for obtaining moneys or bequests for that charitable organization if that person has also received compensation for advising the donor to make the donation; provided that compensation may be received if the person obtains the written consent of the donor to receive compensation from the charitable organization.

(n) No person shall act as a professional solicitor if the person, any officer, any person with a controlling interest therein, or any person the professional solicitor employs, engages, or procures to solicit for compensation, has been convicted by any federal or state court of any felony, or of any misdemeanor involving dishonesty or arising from the conduct of a solicitation for a charitable organization or purpose.

(o) No charitable organization shall use the services of an unregistered professional solicitor or professional fundraising counsel. [L 1969, c 167, pt of §1; am L 1978, c 182, §3; am L 1982, c 204, §8; gen ch 1985; am L 1993, c 206, §8; am L 1994, c 35, §1; am L 1995, c 50, §1; am L 2004, c 93, §8; am L 2008, c 174, §7; am L 2013, c 61, §8]

" **§467B-9.3 Investigations; subpoenas; court orders.** (a) The department, on its own motion or upon complaint of any person, may conduct an investigation to determine whether any person has violated or is about to violate any provision of sections 467B-2.1, 467B-6.5, and 467B-9.

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

(c) If any person fails to obey any subpoena issued by the department pursuant to this section, the department, after notice, may apply to the circuit court for the first circuit, State of Hawaii, for a hearing on the application, and after the hearing, the court may issue an order requiring the person to obey the subpoena or any part of the subpoena together with any other relief as may be appropriate. Any disobedience of any order entered under this section by any court shall be punished as contempt.

(d) In any case where the attorney general has authority to institute a civil action or proceeding in connection with the enforcement of this chapter, the attorney general may instead accept an assurance of discontinuance of any act or practice that violates the law from any person engaged in or who has engaged in the act or practice. Assurance accepted under this

subsection may include a stipulation for the voluntary payment by the alleged violator of reasonable costs and disbursements incurred by the attorney general during the course of the attorney general's investigation. Evidence of a violation of an assurance shall constitute prima facie evidence of a violation of the applicable law in any civil action or proceeding later commenced by the attorney general. [L 2008, c 174, pt of §2; am L 2011, c 40, §3]

" **§467B-9.5 Financial statements.** Whenever the attorney general has reasonable grounds to believe that any charitable organization, professional fundraising counsel, professional solicitor, or commercial co-venturer has engaged in any act or practice constituting a violation of this chapter or any rule or order adopted or issued, the attorney general may require the charitable organization, professional fundraising counsel, professional solicitor, or commercial co-venturer to submit to the department an audited financial statement prepared in accordance with generally accepted accounting principles by an independent certified public accountant, or as otherwise required by the attorney general. [L 1990, c 129, pt of §2; am L 1993, c 206, §9; am L 2004, c 93, §9; am L 2013, c 61, §9]

" **§467B-9.6 Enforcement.** (a) If any charitable organization, professional fundraising counsel, professional solicitor, or commercial co-venturer fails to file any statement, report, written consent, or other information required to be filed under this chapter, the attorney general may demand that the charitable organization, the professional fundraising counsel, professional solicitor, or commercial co-venturer provide the statement, report, written consent, or other information not more than twenty days after demanded by the attorney general. This demand may be mailed to the address on file with the department.

(b) Whenever the attorney general has reason to believe that any charitable organization, professional fundraising counsel, professional solicitor, commercial co-venturer, or other person is operating in violation of this chapter, the attorney general may investigate and bring an action in any court of this State to enjoin the charitable organization, professional fundraising counsel, professional solicitor, commercial co-venturer, or other person from continuing the violation or doing any acts in furtherance thereof, and for any other relief that the court deems appropriate. [L 1993, c 206, pt of §1; am L 2004, c 93, §10; am L 2013, c 61, §10]



" **§467B-9.7 Administrative enforcement and penalties.** (a) The attorney general may refuse to register, revoke, or suspend the registration of any charitable organization, professional fundraising counsel, or professional solicitor, or issue a cease and desist order whenever the attorney general finds that a charitable organization, professional fundraising counsel, or professional solicitor, or its agent, servant, or employee:

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

(b) When the attorney general finds that the registration of any person may be refused, suspended, or revoked under the terms of subsection (a), the attorney general may:

- (1) Revoke a grant of exemption from any provisions of this chapter;
- (2) Issue an order directing that the person cease specified fundraising activities;
- (3) Impose an administrative fine not to exceed \$1,000 for each act or omission that constitutes a violation of this chapter and an additional penalty, not to exceed \$100, for each day during which the violation continues. Registration shall be automatically suspended upon final affirmation of an administrative fine until the fine is paid or until the normal expiration date of the registration. No registration shall be renewed until the fine is paid; or
- (4) Place the registrant on probation for any period of time and subject to any conditions as the attorney general may determine.

(c) Any person aggrieved by an action of the attorney general under this section may request a hearing to review that action in accordance with chapter 91 and rules adopted by the attorney general. Any request for hearing shall be made within ten days after the attorney general has served the person with notice of the action, which notice shall be deemed effective upon mailing.

(d) The attorney general may apply to the circuit court for the first circuit, State of Hawaii, for relief, and the court may issue a temporary injunction or a permanent injunction to restrain violations of this chapter, appoint a receiver, order restitution or an accounting, or grant other relief as may be appropriate to ensure the due application of charitable funds. Proceedings thereon shall be brought in the name of the State. [L 2004, c 93, pt of §1; am L 2006, c 168, §4; am L 2008, c 174, §8; am L 2011, c 40, §4]

" **§467B-10 Penalties.** Any person who intentionally or knowingly violates this chapter, or who intentionally or knowingly gives false or incorrect information to the attorney general in filing statements or reports required by this chapter, whether the reports or statements are verified or not, shall:

- (1) For the first offense be fined not less than \$100 nor more than \$500, or imprisoned not more than six months, or both; and
- (2) For the second and any subsequent offense, be fined not less than \$500 nor more than \$1,000, or imprisoned not more than one year, or both. [L 1969, c 167, pt of §1; am L 1971, c 162, §§4, 5; am L 1981, c 54, §3; gen ch 1985; am L 1990, c 129, §5; am L 1993, c 206, §10; am L 2004, c 93, §11]

#### **Cross References**

Classification of offense and authorized punishment, see §§701-107, 706-640, and 706-663.

" **§467B-10.5 Violation as unfair practice.** Any person who engages in an act or practice that violates this chapter or rules adopted or issued shall have engaged in an unfair or deceptive act or practice in the conduct of a trade or commerce, in violation of section 480-2, and shall be subject to the penalties and remedies provided for such a violation. [L 1990, c 129, pt of §2; am L 1993, c 206, §11]

" **§467B-11 REPEALED.** L 1996, c 120, §3.

" **§467B-11.5 Charitable organizations exempted from registration and financial disclosure requirements.** The following charitable organizations shall not be subject to sections 467B-2.1 and 467B-6.5, if the organization submits an application for an exemption to the department and the department approves the organization's application:

- (1) Any duly organized religious corporation, institution, or society that is exempt from filing Form 990 with the Internal Revenue Service pursuant to sections 6033(a)(3)(A)(i) and (iii) and 6033(a)(3)(C)(i) of the Internal Revenue Code, as amended;
- (2) Parent-teacher associations;
- (3) Any educational institution that is licensed or accredited by any of the following licensing or accrediting organizations:
  - (A) Hawaii Association of Independent Schools;
  - (B) Hawaii Council of Private Schools;
  - (C) Western Association of Schools and Colleges;
  - (D) Middle States Association of Colleges and Schools;
  - (E) New England Association of Schools and Colleges;
  - (F) North Central Association of Colleges and Schools;
  - (G) Northwest Commission on Colleges and Universities;
  - (H) Southern Association of Colleges and Schools;
  - (I) The National Association for the Education of Young Children; or
  - (J) The Northwest Accreditation Commission for Primary and Secondary Schools;and any organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code expressly authorized by, and having an established identity with an educational institution accredited by one of the foregoing accrediting agencies; provided that the organization's solicitation of contributions is primarily directed to the students, alumni, faculty, and trustees of the institutions and their respective families;
- (4) Any nonprofit hospital licensed by the State or any similar provision of the laws of any other state;
- (5) Any corporation established by an act of the United States Congress that is required by federal law to submit to Congress annual reports, fully audited by the United States Department of Defense, of its activities including itemized accounts of all receipts and expenditures;
- (6) Any agency of this State, another state, or the federal government; and
- (7) Any charitable organization that normally receives less than \$25,000 in contributions annually, if the organization does not employ or compensate a professional solicitor or professional fundraising

counsel. For purposes of this paragraph, an organization normally receives less than \$25,000 in contributions annually if, during the immediately preceding three fiscal years, it received, on average, less than \$25,000 in contributions.

The attorney general may require the application for exemption to be filed electronically with the department and may require the use of electronic signatures. [L 2008, c 174, pt of §2; am L 2011, c 40, §5; am L 2013, c 61, §11; am L 2016, c 163, §7]

" **§467B-12 Filing requirements for professional fundraising counsel and professional solicitors.** (a) Every professional fundraising counsel or professional solicitor, prior to any solicitation, shall register with the department. The registration statement shall contain the information set forth in subsection (e). The registration statement shall be accompanied by a fee in the amount of \$250, or in the amount and with any additional sums as may be prescribed by the attorney general. Renewal registration statements shall be filed with the department on or before July 1 of each calendar year by each professional fundraising counsel or professional solicitor. The renewal statement shall contain the information set forth in subsection (e). A renewal fee of \$250, or in any amount and with any additional sums as may be prescribed by the attorney general, shall accompany the renewal statement. If a renewal registration required under this section is not filed, unless it is shown that the failure is due to reasonable cause, a fine of \$20 shall be imposed for each day during which the violation continues; provided that the total amount imposed under this subsection shall not exceed \$1,000.

(b) Each professional solicitor, at the time of each filing, shall file with and have approved by the attorney general a bond in which the applicant is the principal obligor in the penal sum of \$25,000 issued with good and sufficient surety or sureties approved by the attorney general and which shall remain in effect for one year. The bond shall inure to the benefit of the State, conditioned that the applicant, its officers, directors, employees, agents, servants, and independent contractors shall not violate this chapter. A partnership or corporation that is a professional solicitor may file a consolidated bond on behalf of all its members, officers, and employees.

(c) The attorney general shall examine each registration statement and supporting document filed by a professional fundraising counsel or professional solicitor and shall determine whether the registration requirements are satisfied. If the attorney general determines that the registration

requirements are not satisfied, the attorney general shall notify the professional fundraising counsel or professional solicitor in writing within fifteen business days of its receipt of the registration statement; otherwise the registration statement is deemed to be approved. Within seven business days after receipt of a notification that the registration requirements are not satisfied, the professional fundraising counsel or professional solicitor may request a hearing.

(d) The attorney general may require that registration and renewal registration, surety bonds, and contracts be filed with the department electronically and may require the use of electronic signatures.

(e) Each registration and renewal registration shall contain:

- (1) The names and addresses of all owners, officers, and directors of a professional fundraising counsel, and the names and addresses of all owners, officers, and directors of a professional solicitor;
- (2) A statement concerning the corporate form of the registrant, whether corporation, limited liability corporation, partnership, or individual;
- (3) A statement whether the registrant has an office in Hawaii and the name and phone number of the person in charge of the office;
- (4) The names and addresses of any individuals supervising any solicitation activity;
- (5) A statement whether the [registrant] has entered into a consent agreement with, or been disciplined by or subject to administrative action by, another governmental agency;
- (6) A statement whether any officer, director, or any person with a controlling interest in the registrant has ever been convicted of a felony or a misdemeanor involving dishonesty in the solicitation for a charitable purpose;
- (7) The date that the registrant began soliciting Hawaii residents on behalf of a charitable organization or providing professional fundraising counsel services; and
- (8) Whether any owners, directors, or officers are related to:
  - (A) Any other officers, directors, owners, or employees of the registrant;
  - (B) Any officer, director, trustee, or employee of a charitable organization under contract with the registrant; and

- (C) Any vendor or supplier providing goods or services to a charitable organization under contract with the registrant. [L 1969, c 167, pt of §1; gen ch 1985; am L 1993, c 206, §13; am L 2004, c 93, §12; am L 2006, c 168, §5; am L 2008, c 174, §9; am L 2013, c 61, §12]

" **§467B-12.5 Written contracts; filing with attorney**

**general.** (a) There shall be a written contract between a charitable organization and a professional fundraising counsel or professional solicitor that shall be filed by the professional fundraising counsel or professional solicitor with the attorney general at least ten business days prior to the performance by the professional fundraising counsel or professional solicitor of any service. No solicitation or service pursuant to the contract shall begin before the contract is filed with the attorney general. The contract shall be signed by two authorized officials of the charitable organization, one of whom shall be a member of the organization's governing body, and the authorized contracting officer for the professional fundraising counsel or professional solicitor. The contract shall contain all of the following provisions:

- (1) The legal name and address of the charitable organization;
- (2) A statement of the charitable purpose for which the solicitation campaign is being conducted;
- (3) A statement of the respective obligations of the professional fundraising counsel or professional solicitor and the charitable organization;
- (4) A statement of the guaranteed minimum percentage of the gross receipts from contributions that will be remitted to or retained by the charitable organization, if any, or, if the solicitation involves the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price that will be remitted to the charitable organization, if any. The stated percentage shall exclude any amount that the charitable organization is to pay as fundraising costs;
- (5) Information concerning the compensation of the professional solicitor and fundraising counsel as follows:
  - (A) If the compensation of the professional fundraising counsel or professional solicitor is contingent upon the number of contributions or the amount of revenue received, a statement shall

be included specifying the percentage of the gross revenue that is the basis for that compensation. The stated percentage shall include any amount that the professional fundraising counsel or professional solicitor is to be reimbursed for fundraising costs;

- (B) If the compensation of the professional solicitor is not contingent upon the number of contributions or amount of revenue received from the solicitation campaign, the compensation shall be expressed as a reasonable estimate of the percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. The stated assumptions shall be based upon all of the relevant facts known to the professional solicitor regarding the solicitation to be conducted by the professional solicitor; or
  - (C) If the compensation of the fundraising counsel is not contingent on the number of contributions or amount of revenue received from the solicitation campaign, the compensation shall be stated in a dollar amount;
- (6) The effective and termination dates of the contract or, if the contract does not have a set termination date, a clause allowing either party a reasonable period to terminate the contract or notify the other party if either party chooses not to renew. The contract shall also contain the date services will commence with respect to solicitation in this State of contributions for a charitable organization;
  - (7) In the case of a professional fundraising counsel, a statement that the professional fundraising counsel will not at any time have custody or control of contributions;
  - (8) A statement that the charitable organization exercises control and approval over the content and volume of any solicitation; and
  - (9) Any other information required by the rules of the attorney general.

(b) No professional fundraising counsel or professional solicitor shall contract with a charitable organization unless the professional fundraising counsel or professional solicitor is registered with the department. A contract with an unregistered professional fundraising counsel or professional solicitor shall be voidable at the option of the charitable organization.

(c) Whenever a charitable organization contracts with a professional fundraising counsel or professional solicitor, the charitable organization shall have the right to cancel the contract without cost, penalty, or liability, for a period of ten days following the date on which that contract is executed. Any provision in the contract that is intended to waive this right of cancellation shall be void and unenforceable.

(d) A charitable organization may cancel a contract pursuant to subsection (c) by serving a written notice of cancellation on the professional fundraising counsel or professional solicitor. If mailed, service shall be by certified mail, return receipt requested, and cancellation shall be deemed effective upon receipt by the professional fundraising counsel or professional solicitor. The notice shall be sufficient if it indicates that the charitable organization does not intend to be bound by the contract.

(e) Any funds collected after effective notice that a contract has been canceled shall be deemed to be held in trust for the benefit of the charitable organization without deduction for cost or expenses of any nature. A charitable organization shall be entitled to recover all funds collected after the date of cancellation. [L 2004, c 93, pt of §1; am L 2006, c 168, §6]

" **§467B-13 Rules.** The attorney general may make, amend, or repeal such rules pursuant to chapter 91, as may be deemed proper to effectuate this chapter. [L 1981, c 30, §4 as superseded by c 54, §4; am L 2004, c 93, §13]

" **§467B-14 REPEALED.** L 1996, c 120, §4.

" **[§467B-15] Solicitation of funds for charitable purposes special fund.** There is established in the state treasury the solicitation of funds for charitable purposes special fund, into which shall be deposited all fees, fines, penalties, attorneys' fees, and costs of investigation collected under this chapter. Moneys in the fund may be expended by the attorney general for the enforcement of this chapter, the dissemination of public information, and the oversight of charities and professional fundraisers. [L 2004, c 93, pt of §1]

#### **Note**

Transfer of certain interest earnings to general fund until June 30, 2015. L 2009, c 79, §30(a)(38).

" **[§467B-16] 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 who does not have a registered agent with the department of commerce and consumer affairs, is considered to have irrevocably appointed the department of the attorney general 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.

(b) Service under subsection (a) is complete if the department immediately sends notice of the service and a copy of the process 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, professional solicitor, or other person to whom it is directed, by registered mail, return receipt requested, to the last address known to the department of the charitable organization, professional fundraising counsel, professional solicitor, or other person to whom it is directed.

(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 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 may be made by any of the following methods:

- (1) Mailing by registered or certified mail to the last-known place of business, residence, or abode within or without this State of the person for whom the subpoena is intended;
- (2) For any person other than a natural person, in the manner provided for service of summons in an action or suit; or
- (3) Service as directed by a court in lieu of personal service within this State. [L 2011, c 40, pt of §1]

" **[§467B-17] Administrative enforcement; cease and desist orders.** (a) Whenever the attorney general finds that a charitable organization has violated section 467B-2.1, the

attorney general may issue, in addition to the remedies prescribed by section 467B-9.7(b), a cease and desist order to the charitable organization.

(b) Any person aggrieved by an action of the attorney general under this section may request an administrative hearing to review that action in accordance with chapter 91 and rules adopted by the attorney general. Any request for hearing shall be made within ten days after the attorney general has served the person with notice of the action; provided that notice shall be deemed effective upon mailing. [L 2011, c 40, pt of §1]