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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 a new section to be appropriately designated  
3 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 as its agent for the  
12 service of a summons, subpoena, or other process directed to the  
13 charitable organization, professional fundraising counsel, or  
14 professional solicitor, or to a director, officer, partner, or  
15 principal of the charitable organization, professional  
16 fundraising counsel, or professional solicitor in an  
17 investigation, action, or other proceeding brought under this

1 chapter, or for purpose of service of a subpoena under section  
2 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 therefore 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       SECTION 2. Chapter 467B, Hawaii Revised Statutes, is  
11       amended by adding a new section to be appropriately designated  
12       and to read as follows:

13       **"§467B- Administrative enforcement; cease and desist**  
14       **orders.** (a) Whenever the attorney general finds that a  
15       charitable organization is soliciting contributions in violation  
16       of section 467B-2.1, the attorney general may, in addition to  
17       the remedies prescribed by section 467B-9.7(b), issue a cease  
18       and desist order to any such charitable organization.

19       (b) Any person aggrieved by an action of the attorney  
20       general under this section may request a hearing to review that  
21       action in accordance with chapter 91 and rules adopted by the  
22       attorney general. Any request for hearing shall be made within

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1 ten days after the attorney general has served the person with  
2 notice of the action, which notice shall be deemed effective  
3 upon mailing."

4 SECTION 3. Section 467B-6.5, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "[~~f~~]**\$467B-6.5**[~~]~~ **Annual financial reports; fiscal records**  
7 **and fees.** (a) Every charitable organization required to  
8 register pursuant to section 467B-2.1 shall annually file with  
9 the department a report for its most recently completed fiscal  
10 year. [~~The report shall include a financial statement and other~~  
11 ~~information as the department may require.~~] If the charitable  
12 organization files an IRS Form 990 or 990EZ with the Internal  
13 Revenue Service, the annual report shall be a copy of that IRS  
14 Form 990 or 990EZ. Every registered charitable organization  
15 shall also submit to the department a copy of any IRS Form 990T  
16 submitted to the Internal Revenue Service. In the case of a  
17 charitable organization that is not required to file an IRS Form  
18 990 or 990EZ, the annual report shall contain such information  
19 as the department shall prescribe. The charitable organization  
20 shall file the report not more than [~~eight months~~] the fifteenth  
21 day of the fifth month following the close of its fiscal year  
22 [~~on or before the date the organization files a Form 990 or~~

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

1 (b) A charitable organization with gross revenue in excess  
2 of \$500,000 in the year covered by the report shall include with  
3 its annual financial report, an audit report, prepared in  
4 accordance with generally accepted accounting principles, by a  
5 certified public accountant; provided that any charitable  
6 organization shall include with its annual financial report an  
7 audit report, prepared in accordance with generally accepted  
8 accounting principles, by a certified public accountant as a  
9 result of a requirement imposed by a governmental authority or a  
10 third party. For purpose of this subsection, "gross revenue"  
11 does not include grants or fees from government agencies or  
12 revenue derived from funds held in trust for the benefit of the  
13 organization.

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

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

22 (1) \$10, if less than \$25,000;

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- 1 (2) \$25, if \$25,000 but less than \$50,000;
- 2 (3) \$50, if \$50,000 but less than \$100,000;
- 3 (4) \$100, if \$100,000 but less than \$250,000;
- 4 (5) \$150, if \$250,000 but less than \$500,000;
- 5 (6) \$200, if \$500,000 but less than \$1,000,000;
- 6 (7) \$300, if \$1,000,000 but less than \$2,000,000;
- 7 (8) \$500, if \$2,000,000 but less than \$5,000,000; or
- 8 (9) \$750, 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, including the use of  
4 electronic signatures."

5       SECTION 4. 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 on complaint of any  
9 person, may conduct an investigation to determine whether any  
10 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, together with any other  
2 relief as may be appropriate. Any disobedience of any order  
3 entered under this section by any court shall be punished as a  
4 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, in lieu thereof the attorney  
8 general may accept an assurance of discontinuance of any act or  
9 practice in violation of such law from any person engaged or who  
10 has engaged in such act or practice. Such assurance may include  
11 a stipulation for the voluntary payment by the alleged violator  
12 of the reasonable costs and disbursements incurred by the  
13 attorney general during the course of the attorney general's  
14 investigation. Evidence of a violation of such assurance shall  
15 constitute prima facie proof of violation of the applicable law  
16 in any civil action or proceeding thereafter commenced by the  
17 attorney general."

18 SECTION 5. 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 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 6. 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 organization submits  
2 information as the department may require to substantiate an  
3 exemption under this section:

4 (1) Any duly organized religious corporation, institution,  
5 or society~~[-]~~ that is exempt from filing an Internal  
6 Revenue Service Form 990 with the Internal Revenue  
7 Service pursuant to sections 6033(a)(3)(A)(i) and  
8 (iii) and 6033(a)(3)(C)(i) of the Internal Revenue  
9 Code, as amended;

10 (2) Parent-teacher associations;

11 ~~[(2)]~~ (3) Any ~~[parent-teacher association or]~~ educational  
12 institution~~[-, the curricula of which in whole or in~~  
13 ~~part are registered or approved by any state or the~~  
14 ~~United States either directly or by acceptance of~~  
15 ~~accreditation by an accrediting body;]~~ that is  
16 licensed or accredited by any of the following  
17 licensing or regional accrediting organizations:

18 (A) Hawaii Association of Independent Schools;

19 (B) Hawaii Council of Private Schools;

20 (C) Western Association of Schools and Colleges;

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

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

2            (F) North Central Association of Schools and

3            Colleges;

4            (G) Northwest Association of Schools and Colleges;

5            and

6            (H) Southern Association of Schools and Colleges.

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

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


4           SECTION 7. Statutory material to be repealed is bracketed  
 5 and stricken. New statutory material is underscored.

6           SECTION 8. This Act shall take effect upon its approval.

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8

INTRODUCED BY:



9

BY REQUEST

**Report Title:**

Charitable Organizations; Solicitation of Funds from the Public

**Description:**

Amends chapter 467B, Hawaii Revised Statutes, to allow service of process by substitute service, allows the Attorney General to accept assurances of discontinuance and 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.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO THE SOLICITATION OF FUNDS FROM THE PUBLIC.

PURPOSE: The purposes of this "housekeeping" bill are to amend chapter 467B, Hawaii Revised Statutes, to provide that: (1) out-of-state charities and professional fundraisers appoint the Attorney General as an agent for service of process for any investigation or proceeding arising under chapter 467B; (2) substituted service of process can be made on Hawaii domiciled charities and professional fundraisers if personal service cannot be effected; (3) a registered charity's annual financial report shall be the organization's IRS Form 990 or 990EZ; (4) the late fee provided by section 467B-6.5(e), Hawaii Revised Statutes, shall apply to the failure to make the annual payment as well as failure to file records or reports; (5) the Attorney General may accept an assurance of discontinuance during the course of an investigation of violations of chapter 467B, Hawaii Revised Statutes; and (6) authorize the issuance of cease and desist orders for violations of the law.

In addition, the bill clarifies the exemptions to the registration requirement for charitable organizations that solicit contributions.

MEANS: Add two new sections to chapter 467B, Hawaii Revised Statutes, and amend sections 467B-6.5, 467B-9.3, 467B-9.7(a), and 467B-11.5, Hawaii Revised Statutes.

JUSTIFICATION: The appointment of the Attorney General as an agent for service of process will allow the Attorney General to more efficiently service process, including an investigatory subpoena on charities and professional fundraisers domiciled out of state.

The designation of a charity's IRS Form 990 or 990EZ as the charity's annual financial report will provide better clarity in the law for the charitable sector.

Requiring that a charitable organization's audited financial statement be prepared in accordance with generally accepted accounting principles will ensure uniformity in such audit reports.

The amendments to the exemptions to the registration requirement for charitable organizations are necessary to clarify the exemptions for bona fide religious organizations, accredited educational institutions, government instrumentalities, and charities that normally receive less than \$25,000.

Impact on the public: This bill will make the registration and exemption provisions of chapter 467B, Hawaii Revised Statutes, more understandable for charitable organizations that must register.

Impact on the department and other agencies: This bill will allow the Department to more efficiently administer and enforce chapter 467B, Hawaii Revised Statutes.

GENERAL FUND: None.  
OTHER FUNDS: None.  
PPBS PROGRAM DESIGNATION: ATG 100  
OTHER AFFECTED AGENCIES: None.  
EFFECTIVE DATE: Upon approval.