

ACT 40

S.B. NO. 1233

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:*

SECTION 1. Chapter 467B, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§467B- 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.

**§467B- 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."

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

**["§467B-6.5] Annual financial reports; fiscal records and fees.** (a) Every charitable organization required to register pursuant to section 467B-2.1 shall annually file with the department a report for its most recently completed fiscal year. ~~[The report shall include a financial statement and other information as the department may require.]~~ 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 charitable organization shall file [the] its annual report not [more] later than [eight months] the fifteenth day of the fifth month following the close of its fiscal year [on or before the date the organization files a Form 990 or 990EZ with the Internal Revenue Service]. A charitable organization that has obtained an extension of time to file a Form 990 or 990-EZ from the Internal Revenue Service may obtain an extension of time to file the annual report with the department, by filing with the

department a copy of the Internal Revenue Service's approved extension of time to file. The report shall be accompanied by a filing fee as prescribed by subsection (d) ~~[and shall be signed by two authorized officers of the organization, one of whom shall be the chief fiscal officer of the organization. These officers shall certify that the report is true and correct to the best of their knowledge. The department shall prescribe the form of the report and shall prescribe standards for its completion].~~ The department shall accept, under ~~[such]~~ conditions ~~[as]~~ prescribed by the attorney general [may prescribe], 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 ~~[990N]~~ 990-N with the Internal Revenue Service.

(b) A charitable organization with gross revenue in excess of \$500,000 in the year covered by the report shall include with its annual financial report, an audit report, prepared in accordance with generally accepted accounting principles, by a certified public accountant; provided that any charitable organization shall include with its annual financial report an audit report, prepared in accordance with generally accepted accounting principles, by a certified public accountant ~~[as a result of a requirement imposed]~~ if required to do so by a governmental authority or a third party. For the purpose of this subsection, "gross revenue" does not include grants or fees from government agencies or revenue derived from funds held in trust for the benefit of the organization.

(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 ~~[income and receipts]~~ 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) \$10, 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) ~~[\$300;]~~ \$250, if \$1,000,000 but less than \$2,000,000;
- (8) ~~[\$500;]~~ \$350, if \$2,000,000 but less than \$5,000,000; or
- (9) ~~[\$750;]~~ \$600, if \$5,000,000 or more.

(e) If a return or report required under this section is not filed, taking into account any extension of time for filing, 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. ~~[Returns and reports submitted without the proper filing fee shall not be accepted for filing.]~~

(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."

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

**“[§467B-9.3] Investigations; subpoenas; court orders.** (a) The department, on its own motion or ~~on~~ 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 ~~thereof~~, 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 ~~a~~ contempt ~~thereof~~.

(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.”

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

“(a) The attorney general may refuse to register ~~or may~~, 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 ~~an~~ its agent, servant, or employee ~~thereof~~:

- (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.”

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

**“[§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 ~~each~~ the organization sub-

mits information as the department may require to substantiate an exemption under this section:

- (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;
- ~~(2)~~ (3) Any ~~[parent-teacher association or]~~ educational institution~~[-, the curricula of which in whole or in part are registered or approved by any state or the United States either directly or by acceptance of accreditation by an accrediting body;]~~ 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 Association of Schools and Colleges;
  - (H) Southern Association of Colleges and Schools; or
  - (I) The National Association for the Education of Young Children;
 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, such an educational institution; 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;
- ~~(3)~~ (4) Any nonprofit hospital licensed by the State or any similar provision of the laws of any other state;
- ~~(4)~~ (5) Any ~~[governmental unit or instrumentality of any state or the United States;]~~ 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;
- ~~(5)~~ (6) Any ~~[person who solicits solely for the benefit of organizations described in paragraphs (1) to (4);]~~ agency of this State, another state, or the federal government; and
- ~~(6)~~ (7) Any charitable organization that normally receives less than \$25,000 in contributions annually, if the organization does not ~~[compensate any person primarily to conduct solicitations.]~~ employ or compensate a professional solicitor or professional fundraising counsel.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

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

(Approved May 4, 2011.)

#### Note

1. Edited pursuant to HRS §23G-16.5.