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# A BILL FOR AN ACT

RELATING TO CHARITABLE ORGANIZATIONS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. Section 467B-1, Hawaii Revised Statutes, is  
2 amended by amending the definition of "Gross revenue" to read as  
3 follows:

4       "~~[Gross]~~ Total revenue" means income of any kind from all  
5 sources, including all amounts received as the result of any  
6 solicitation by a professional solicitor."

7       SECTION 2. Section 467B-2.5, Hawaii Revised Statutes, is  
8 amended to read as follows:

9       "~~§467B-2.5 Professional solicitor financial reports;~~  
10 ~~contribution account. (a) [Within ninety days after a~~  
11 ~~solicitation campaign or event has been completed or within~~  
12 ~~ninety days of the anniversary of the commencement of a~~  
13 ~~solicitation campaign lasting more than one year, a]~~ A  
14 professional solicitor shall file with the attorney general a  
15 financial report for ~~[the]~~ any charitable solicitation  
16 campaign, including ~~[gross]~~ total revenue from Hawaii donors  
17 and national ~~[gross]~~ total revenue and an itemization of all

1 expenses incurred on a form prescribed by the attorney  
2 general[-] as follows:

3 (1) Within ninety days after a solicitation campaign  
4 or event has been completed; and

5 (2) For any solicitation campaign lasting more than  
6 one year, within ninety days after the anniversary  
7 of the commencement of the solicitation campaign.

8 The attorney general may require the financial report to be  
9 submitted electronically and may require the use of electronic  
10 signatures. This report shall be signed by the professional  
11 solicitor or by an authorized officer or agent of the  
12 professional solicitor who shall certify that the statements  
13 therein are true and correct to the best of the solicitor's,  
14 officer's, or agent's knowledge subject to penalties imposed by  
15 section 710-1063. If a financial report required under this  
16 section is not filed in a timely manner, taking into account any  
17 extension of time for filing, unless it is shown that the  
18 failure is due to reasonable cause, an initial late filing fee  
19 of \$100 shall be imposed, and an additional late filing fee of  
20 \$20 per day shall be imposed, for each day during which the  
21 violation continues; provided that the total fee amount imposed  
22 under this subsection shall not exceed \$1,000. The attorney  
23 general may waive all or part of the late filing fee imposed

1 by this subsection if there is a reasonable cause for the  
2 failure to timely file. The professional solicitor shall  
3 provide a copy of the financial report to the charitable  
4 organization to which the financial report pertains within  
5 ten days of its submission of the report to the attorney  
6 general.

7 (b) A professional solicitor shall maintain during  
8 each solicitation campaign and for not less than three years  
9 after the completion of that campaign the following records,  
10 which shall be available for inspection upon demand by the  
11 attorney general:

- 12 (1) The date and amount of each contribution received  
13 and the name and address of each contributor;
- 14 (2) The name and residence of each employee, agent, or  
15 other person involved in the solicitation;
- 16 (3) Records of all revenue received and expenses  
17 incurred in the course of the solicitation  
18 campaign; and
- 19 (4) The location and account number of each bank or  
20 other financial institution account in which the  
21 professional solicitor has deposited revenue from  
22 the solicitation campaign.

23 ~~[(b)]~~ (c) Any material change in any information filed with

1 the attorney general pursuant to this section shall be reported  
2 in writing by the professional solicitor to the attorney general  
3 not more than seven days after the change occurs.

4 ~~[(e)]~~ (d) Each contribution in the control or custody of  
5 the professional solicitor, in its entirety and within five days  
6 of its receipt, shall be deposited in an account at a bank or  
7 other federally insured financial institution, which shall be in  
8 the name of the charitable organization. The charitable  
9 organization shall maintain and administer the account and shall  
10 have sole control of all withdrawals."

11 SECTION 3. Section 467B-5.5, Hawaii Revised Statutes, is  
12 amended by amending subsections (b) and (c) to read as follows:

13 "(b) Prior to the commencement of any charitable sales  
14 promotion in this State conducted by a commercial co-venturer  
15 using the name of a charitable organization, the commercial  
16 co-venturer shall obtain the written consent of the charitable  
17 organization whose name will be used during the charitable sales  
18 promotion. The commercial co-venturer shall file a copy of the  
19 written consent with the department not less than ten days prior  
20 to the commencement of the charitable sales promotion within  
21 this State. An authorized representative of the charitable  
22 organization and the commercial co-venturer shall sign the  
23 written consent, and the terms of the written consent shall

1 include the following:

2 (1) The goods or services to be offered to the public;

3 (2) The geographic area where, and the starting and final  
4 date when, the offering is to be made;

5 (3) The manner in which the name of the charitable  
6 organization is to be used, including any  
7 representation to be made to the public as to the  
8 amount or per cent per unit of goods or services  
9 purchased or used that is to benefit the charitable  
10 organization;

11 (4) A provision for an [final] accounting on a per unit  
12 basis which shall be prepared by the commercial co-  
13 venturer and [to be] given [by the commercial co-  
14 venturer] to the charitable organization and the date  
15 when it is to be made, which date shall be no more  
16 than ninety days after the end of the charitable sales  
17 promotion [+] and, for promotions lasting more than  
18 one year, shall be within ninety days after the  
19 anniversary of the commencement of the charitable  
20 sales promotion and within ninety days after the end  
21 of the charitable sales promotion; and

22 (5) The date when and the manner in which the benefit is  
23 to be conferred on the charitable organization, [+]

1       which date shall be within ninety days after the end  
2       of the charitable sales promotion and, for charitable  
3       sales promotions lasting more than one year, shall be  
4       within ninety days after the anniversary of the  
5       commencement of the promotion and within ninety days  
6       after the end of the charitable sales promotion.

7       (c) ~~[A final accounting for each charitable sales~~  
8       ~~promotion shall be prepared by the commercial co-venturer~~  
9       ~~following the completion of the promotion.]~~ A copy of [the]  
10      [final] an accounting shall be provided to the attorney general  
11      not more than twenty days after the copy is requested by the  
12      attorney general. ~~[The final]~~ An accounting shall be kept by  
13      the commercial co-venturer for a period of three years, unless  
14      the commercial co-venturer and the charitable organization  
15      mutually agree that the accounting should be kept by the  
16      charitable organization instead of the commercial co-venturer."

17      SECTION 4. Section 467B-6.5, Hawaii Revised Statutes, is  
18      amended by amending subsections (b) and (c) to read as follows:

19      "(b) A charitable organization ~~[with contributions in~~  
20      ~~excess of \$500,000 in the year covered by the annual financial~~  
21      ~~report and a charitable organization]~~ required to obtain an  
22      audit report by a governmental authority or a third party shall  
23      include with its annual financial report, an audit report,

1 prepared in accordance with generally accepted accounting  
2 principles, by a certified public accountant.

3 (c) Each charitable organization filing a report required  
4 by this section shall pay a filing fee to the department based  
5 on the total amount of its [~~gross revenues~~] total revenue during  
6 the time covered by the report at the close of the calendar or  
7 fiscal year adopted by the charitable organization as follows:

- 8 (1) \$0, if [~~gross~~] total revenue is less than \$25,000;
- 9 (2) \$25, if [~~gross~~] total revenue is at least \$25,000 but  
10 less than \$50,000;
- 11 (3) \$50, if [~~gross~~] total revenue is at least \$50,000 but  
12 less than \$100,000;
- 13 (4) \$100, if [~~gross~~] total revenue is at least \$100,000  
14 but less than \$250,000;
- 15 (5) \$150, if [~~gross~~] total revenue is at least \$250,000  
16 but less than \$500,000;
- 17 (6) \$200, if [~~gross~~] total revenue is at least \$500,000  
18 but less than \$1,000,000;
- 19 (7) \$250, if [~~gross~~] total revenue is at least \$1,000,000  
20 but less than \$2,000,000;
- 21 (8) \$350, if [~~gross~~] total revenue is at least \$2,000,000  
22 but less than \$5,000,000; or
- 23 (9) \$600, if [~~gross~~] total revenue is \$5,000,000 or more."

SECTION 5. Section 467B-8, Hawaii Revised Statutes, is amended to read as follows:

**"§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]~~ charitable organizations shall be confidential under chapter 92F."

SECTION 6. Section 467B-12.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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



1 professional solicitor of any service. No solicitation or  
2 service pursuant to the contract shall begin before the contract  
3 is filed with the attorney general. The contract shall be  
4 signed by two authorized officials of the charitable  
5 organization, one of whom shall be a member of the  
6 organization's governing body, and the authorized contracting  
7 officer for the professional fundraising counsel or professional  
8 solicitor. The contract shall contain all of the following  
9 provisions:

- 10 (1) The legal name and address of the charitable  
11 organization;
- 12 (2) A statement of the charitable purpose for which the  
13 solicitation campaign is being conducted;
- 14 (3) A statement of the respective obligations of the  
15 professional fundraising counsel or professional  
16 solicitor and the charitable organization;
- 17 (4) A statement of the guaranteed minimum percentage of  
18 the [gross]total receipts from contributions that will  
19 be remitted to or retained by the charitable  
20 organization, if any, or, if the solicitation involves  
21 the sale of goods, services, or tickets to a  
22 fundraising event, the percentage of the purchase  
23 price that will be remitted to the charitable

1 organization, if any. The stated percentage shall  
2 exclude any amount that the charitable organization is  
3 to pay as fundraising costs;

4 (5) Information concerning the compensation of the  
5 professional solicitor and fundraising counsel as  
6 follows:

7 (A) If the compensation of the professional  
8 fundraising counsel or professional solicitor is  
9 contingent upon the number of contributions or  
10 the amount of revenue received, a statement shall  
11 be included specifying the percentage of the  
12 [~~gross~~] total revenue that is the basis for that  
13 compensation. The stated percentage shall  
14 include any amount that the professional  
15 fundraising counsel or professional solicitor is  
16 to be reimbursed for fundraising costs;

17 (B) If the compensation of the professional solicitor  
18 is not contingent upon the number of  
19 contributions or amount of revenue received from  
20 the solicitation campaign, the compensation shall  
21 be expressed as a reasonable estimate of the  
22 percentage of the [~~gross~~] total revenue, and the  
23 contract shall clearly disclose the assumptions

1           upon which the estimate is based. The stated  
2           assumptions shall be based upon all of the  
3           relevant facts known to the professional  
4           solicitor regarding the solicitation to be  
5           conducted by the professional solicitor; or

6           (C) If the compensation of the fundraising counsel is  
7           not contingent on the number of contributions or  
8           amount of revenue received from the solicitation  
9           campaign, the compensation shall be stated in a  
10          dollar amount;

11          (6) The effective and termination dates of the contract  
12          or, if the contract does not have a set termination  
13          date, a clause allowing either party a reasonable  
14          period to terminate the contract or notify the other  
15          party if either party chooses not to renew. The  
16          contract shall also contain the date services will  
17          commence with respect to solicitation in this State of  
18          contributions for a charitable organization;

19          (7) In the case of a professional fundraising counsel, a  
20          statement that the professional fundraising counsel  
21          will not at any time have custody or control of  
22          contributions;

23          (8) A statement that the charitable organization exercises

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1 control and approval over the content and volume of  
2 any solicitation; and

3 (9) Any other information required by the rules of the  
4 attorney general."

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

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

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INTRODUCED BY: 

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BY REQUEST  
JAN 22 2018

# H.B. NO. 2321

**Report Title:**

Charitable Organizations

**Description:**

Amends chapter 467B, Hawaii Revised Statutes, to substitute the term "total revenue" in place of "gross revenue", clarify when professional solicitors must file financial reports, clarify when commercial co-venturers must provide a charitable organization with an accounting and the benefit, eliminate the requirement for certain charitable organizations to submit an audit report, and make other housekeeping amendments.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CHARITABLE ORGANIZATIONS.

PURPOSE: The purpose of this bill is to amend chapter 467B, Hawaii Revised Statutes (HRS), to (1) substitute the term "total revenue" in place of "gross revenue", (2) clarify when professional solicitors must file financial reports, (3) clarify when commercial co-venturers must provide a charitable organization with an accounting and the benefit, (4) eliminate the requirement for certain charitable organizations to submit an audit report, and (5) make other housekeeping amendments.

MEANS: Amend sections 467B-1, 467B-2.5, 467B-5.5, 467B-6.5, 467B-8, and 467B-12.5, HRS.

JUSTIFICATION: The amendments to chapter 467B, HRS, replace the term "gross revenue" with "total revenue" to be consistent with the IRS Form 990 "total revenue" amount, ensure the public receives timely information about professional solicitation campaigns by clarifying that professional solicitors that conduct solicitation campaigns lasting more than one year must file financial reports annually and file a financial report after the end of the campaign, protect charitable organizations by requiring commercial co-venturers to deliver an accounting and the benefit to the charitable organization for which it is soliciting within ninety days of the end of the promotion and within ninety days of the anniversary of the promotion lasting greater than one year, relieve registered organizations that receive more than \$500,000 in contributions and is not required to obtain an audit report by any other party from the requirement to submit an audit report, and protect audit reports

of all charitable organizations, not just charities, from public disclosure.

Impact on the public: The amendments will help the public to better understand the requirements for soliciting contributions in Hawaii, will provide the public with timely information about solicitation activities, and will relieve certain organizations from the burden of obtaining an audit report.

Impact on the department and other agencies: The clarifications in this bill will assist the Department of the Attorney General in enforcing chapter 467B, HRS.

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