

S.B. NO. 2748

JAN 24 2018

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."

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

3 "**§467B-8 Information filed to become public records.**
4 Statements, reports, professional fundraising counsel contracts
5 or professional solicitor contracts, commercial co-venturer
6 consents, and all other documents and information required to be
7 filed under this chapter or by the attorney general shall become
8 government records in the department and be open to the general
9 public for inspection pursuant to chapter 92F; provided that
10 information in any registration statement concerning the
11 residential addresses of any officer or director or that
12 identifies a charitable organization's financial or banking
13 accounts and audited financial statements submitted by
14 registered [~~charities~~] charitable organizations shall be
15 confidential under chapter 92F."

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

18 "(a) There shall be a written contract between a
19 charitable organization and a professional fundraising counsel
20 or professional solicitor that shall be filed by the
21 professional fundraising counsel or professional solicitor with
22 the attorney general at least ten business days prior to the
23 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

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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~~] total 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~~] total revenue, and the contract shall clearly disclose the assumptions

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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

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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

SB. NO. 2748

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.