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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 definitions of "gross receipts" and  
3 "gross revenue" to read as follows:

4           "~~[Gross]~~ Total receipts" means the total amount of money,  
5 contributions, and revenue of any kind received by the  
6 charitable organization from all sources, without subtracting  
7 any costs or expenses.

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

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

13          "**§467B-2.5 Professional solicitor financial reports;**  
14 **contribution account.** (a) ~~[Within ninety days after a~~  
15 ~~solicitation campaign or event has been completed or within~~  
16 ~~ninety days of the anniversary of the commencement of a~~  
17 ~~solicitation campaign lasting more than one year, a] A~~



1 professional solicitor shall file with the attorney general a  
2 financial report for ~~the~~ any charitable solicitation  
3 campaign, including ~~gross~~ total revenue from Hawaii donors  
4 and national ~~gross~~ total revenue and an itemization of all  
5 expenses incurred on a form prescribed by the attorney  
6 general ~~[-]~~ as follows:

- 7       (1) Within ninety days after a solicitation campaign or  
8             event has been completed; or
- 9       (2) For any solicitation campaign lasting more than one  
10            year, within ninety days after any anniversary of the  
11            commencement of the solicitation campaign and again no  
12            more than ninety days after the end of the  
13            solicitation campaign.

14       (b) The attorney general may require the financial  
15 report required by subsection (a) to be submitted  
16 electronically and may require the use of electronic  
17 signatures. This report shall be signed by the professional  
18 solicitor or by an authorized officer or agent of the  
19 professional solicitor who shall certify that the statements  
20 therein are true and correct to the best of the solicitor's,  
21 officer's, or agent's knowledge subject to penalties imposed by



1 section 710-1063. If a financial report required under this  
2 section is not filed in a timely manner, taking into account any  
3 extension of time for filing, unless it is shown that the  
4 failure is due to reasonable cause, an initial late filing fee  
5 of \$100 shall be imposed, and an additional late filing fee of  
6 \$20 per day shall be imposed, for each day during which the  
7 violation continues; provided that the total fee amount imposed  
8 under this subsection shall not exceed \$1,000. The attorney  
9 general may waive all or part of the late filing fee imposed  
10 by this subsection if there is a reasonable cause for the  
11 failure to timely file. The professional solicitor shall  
12 provide a copy of the financial report to the charitable  
13 organization to which the financial report pertains within  
14 ten days of its submission of the report to the attorney  
15 general.

16 (c) A professional solicitor shall maintain during  
17 each solicitation campaign and for not less than three years  
18 after the completion of that campaign the following records,  
19 which shall be available for inspection upon demand by the  
20 attorney general:



- 1           (1) The date and amount of each contribution received  
2                   and the name and address of each contributor;
- 3           (2) The name and residence of each employee, agent, or  
4                   other person involved in the solicitation;
- 5           (3) Records of all revenue received and expenses  
6                   incurred in the course of the solicitation  
7                   campaign; and
- 8           (4) The location and account number of each bank or  
9                   other financial institution account in which the  
10                  professional solicitor has deposited revenue from  
11                  the solicitation campaign.
- 12           ~~[(b)]~~ (d) Any material change in any information filed  
13 with the attorney general pursuant to this section shall be  
14 reported in writing by the professional solicitor to the  
15 attorney general not more than seven days after the change  
16 occurs.
- 17           ~~[(e)]~~ (e) Each contribution in the control or custody of  
18 the professional solicitor, in its entirety and within five days  
19 of its receipt, shall be deposited in an account at a bank or  
20 other federally insured financial institution, which shall be in  
21 the name of the charitable organization. The charitable



1 organization shall maintain and administer the account and shall  
2 have sole control of all withdrawals."

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

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

- 17 (1) The goods or services to be offered to the public;  
18 (2) The geographic area where, and the starting and final  
19 date when, the offering is to be made;  
20 (3) The manner in which the name of the charitable  
21 organization is to be used, including any



1 representation to be made to the public as to the  
2 amount or per cent per unit of goods or services  
3 purchased or used that is to benefit the charitable  
4 organization;

5 (4) A provision for [~~a final~~] an accounting on a per unit  
6 basis [~~to be~~], which shall be prepared by the  
7 commercial co-venturer and given [by the commercial  
8 co-venturer] to the charitable organization, and the  
9 date when it is to be made, which date shall be no  
10 more than ninety days after the end of the charitable  
11 sales promotion[~~, and~~] or, for promotions lasting more  
12 than one year, shall be no more than ninety days after  
13 any anniversary of the commencement of the charitable  
14 sales promotion and again no more than ninety days  
15 after the end of the charitable sales promotion; and

16 (5) The date when and the manner in which the benefit is  
17 to be conferred on the charitable organization[~~-~~],  
18 which date shall be within ninety days after the end  
19 of the charitable sales promotion and, for charitable  
20 sales promotions lasting more than one year, shall be  
21 no more than ninety days after any anniversary of the



1           commencement of the promotion and again no more than  
2           ninety days after the end of the charitable sales  
3           promotion.

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

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

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



1 (8) \$350, if [~~gross~~] total revenue is at least \$2,000,000  
2 but less than \$5,000,000; or

3 (9) \$600, if [~~gross~~] total revenue is \$5,000,000 or more."

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

6 "§467B-8 Information filed to become public records.

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

19 SECTION 6. Section 467B-11.5, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "§467B-11.5 Charitable organizations exempted from  
2 registration and financial disclosure requirements. The  
3 following charitable organizations shall not be subject to  
4 sections 467B-2.1 and 467B-6.5, if the organization submits an  
5 application for an exemption to the department and the  
6 department approves the organization's application:

- 7           (1) Any duly organized religious corporation, institution,  
8           or society that is exempt from filing Form 990 with  
9           the Internal Revenue Service pursuant to section  
10           6033(a)(3)(A)(i) and (iii) and (C)(i) of the Internal  
11           Revenue Code, as amended;
- 12           (2) Parent-teacher associations;
- 13           (3) Any educational institution that is licensed or  
14           accredited by any of the following licensing or  
15           accrediting organizations or their successor  
16           organizations:
- 17           (A) Hawaii Association of Independent Schools;
- 18           (B) Hawaii Council of Private Schools;
- 19           ~~(B)~~ (C) Western Association of Schools and Colleges;
- 20           ~~(C)~~ (D) Middle States Association of Colleges and  
21           Schools;





- 1           (6) Any corporation established by an act of the United  
2           States Congress that is required by federal law to  
3           submit to Congress annual reports, fully audited by  
4           the United States Department of Defense, of its  
5           activities including itemized accounts of all receipts  
6           and expenditures;
- 7           (7) Any agency of this State, another state, or the  
8           federal government; and
- 9           (8) Any charitable organization that normally receives  
10          less than \$25,000 in contributions annually, if the  
11          organization does not employ or compensate a  
12          professional solicitor or professional fundraising  
13          counsel. For purposes of this paragraph, an  
14          organization normally receives less than \$25,000 in  
15          contributions annually if, during the immediately  
16          preceding three fiscal years, it received, on average,  
17          less than \$25,000 in contributions.
- 18          The attorney general may require the application for exemption  
19          to be filed electronically with the department and may require  
20          the use of electronic signatures."



1 SECTION 7. Section 467B-12.5, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) There shall be a written contract between a  
4 charitable organization and a professional fundraising counsel  
5 or professional solicitor that shall be filed by the  
6 professional fundraising counsel or professional solicitor with  
7 the attorney general at least ten business days prior to the  
8 performance by the professional fundraising counsel or  
9 professional solicitor of any service. No solicitation or  
10 service pursuant to the contract shall begin before the contract  
11 is filed with the attorney general. The contract shall be  
12 signed by two authorized officials of the charitable  
13 organization, one of whom shall be a member of the  
14 organization's governing body, and the authorized contracting  
15 officer for the professional fundraising counsel or professional  
16 solicitor. The contract shall contain all of the following  
17 provisions:

- 18 (1) The legal name and address of the charitable  
19 organization;
- 20 (2) A statement of the charitable purpose for which the  
21 solicitation campaign is being conducted;



- 1           (3) A statement of the respective obligations of the  
2           professional fundraising counsel or professional  
3           solicitor and the charitable organization;
- 4           (4) A statement of the guaranteed minimum percentage of  
5           the [~~gross~~] total receipts from contributions that  
6           will be remitted to or retained by the charitable  
7           organization, if any, or, if the solicitation involves  
8           the sale of goods, services, or tickets to a  
9           fundraising event, the percentage of the purchase  
10          price that will be remitted to the charitable  
11          organization, if any. The stated percentage shall  
12          exclude any amount that the charitable organization is  
13          to pay as fundraising costs;
- 14          (5) Information concerning the compensation of the  
15          professional solicitor and fundraising counsel as  
16          follows:
- 17                (A) If the compensation of the professional  
18                fundraising counsel or professional solicitor is  
19                contingent upon the number of contributions or  
20                the amount of revenue received, a statement shall  
21                be included specifying the percentage of the



1            [~~gross~~] total revenue that is the basis for that  
2            compensation. The stated percentage shall  
3            include any amount that the professional  
4            fundraising counsel or professional solicitor is  
5            to be reimbursed for fundraising costs;

6            (B) If the compensation of the professional solicitor  
7            is not contingent upon the number of  
8            contributions or amount of revenue received from  
9            the solicitation campaign, the compensation shall  
10           be expressed as a reasonable estimate of the  
11           percentage of the [~~gross~~] total revenue, and the  
12           contract shall clearly disclose the assumptions  
13           upon which the estimate is based. The stated  
14           assumptions shall be based upon all of the  
15           relevant facts known to the professional  
16           solicitor regarding the solicitation to be  
17           conducted by the professional solicitor; or

18           (C) If the compensation of the fundraising counsel is  
19           not contingent on the number of contributions or  
20           amount of revenue received from the solicitation



1                    campaign, the compensation shall be stated in a  
2                    dollar amount;

3            (6)    The effective and termination dates of the contract  
4                    or, if the contract does not have a set termination  
5                    date, a clause allowing either party a reasonable  
6                    period to terminate the contract or notify the other  
7                    party if either party chooses not to renew.    The  
8                    contract shall also contain the date services will  
9                    commence with respect to solicitation in this State of  
10                   contributions for a charitable organization;

11           (7)    In the case of a professional fundraising counsel, a  
12                   statement that the professional fundraising counsel  
13                   will not at any time have custody or control of  
14                   contributions;

15           (8)    A statement that the charitable organization exercises  
16                   control and approval over the content and volume of  
17                   any solicitation; and

18           (9)    Any other information required by the rules of the  
19                   attorney general."



1           SECTION 8. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.  
3           SECTION 9. This Act shall take effect upon its approval.



**Report Title:**

Charitable Organizations; Total Revenue; Reports; Accounting

**Description:**

Amends the State's charitable solicitations law by: substituting the term "total revenue" for the term "gross revenue" and the term "total receipts" for the term "gross receipts"; clarifying when professional solicitors must file financial reports; clarifying when commercial co-venturers must provide a charitable organization with an accounting and the benefit of a charitable sales promotion; eliminating the requirement for certain charitable organizations to submit an audit report; and making housekeeping amendments. (SD2)

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

