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# A BILL FOR AN ACT

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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; and
- 9       (2) For any solicitation campaign lasting more than one  
10           year, within ninety days after the anniversary of the  
11           commencement of the solicitation campaign.

12       (b) The attorney general may require the financial  
13 report required by subsection (a) to be submitted  
14 electronically and may require the use of electronic  
15 signatures. This report shall be signed by the professional  
16 solicitor or by an authorized officer or agent of the  
17 professional solicitor who shall certify that the statements  
18 therein are true and correct to the best of the solicitor's,  
19 officer's, or agent's knowledge subject to penalties imposed by  
20 section 710-1063. If a financial report required under this  
21 section is not filed in a timely manner, taking into account any



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

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

- 19 (1) The date and amount of each contribution received  
20 and the name and address of each contributor;



1 (2) The name and residence of each employee, agent, or  
2 other person involved in the solicitation;

3 (3) Records of all revenue received and expenses  
4 incurred in the course of the solicitation  
5 campaign; and

6 (4) The location and account number of each bank or  
7 other financial institution account in which the  
8 professional solicitor has deposited revenue from  
9 the solicitation campaign.

10 [~~(b)~~] (d) Any material change in any information filed  
11 with the attorney general pursuant to this section shall be  
12 reported in writing by the professional solicitor to the  
13 attorney general not more than seven days after the change  
14 occurs.

15 [~~(e)~~] (e) Each contribution in the control or custody of  
16 the professional solicitor, in its entirety and within five days  
17 of its receipt, shall be deposited in an account at a bank or  
18 other federally insured financial institution, which shall be in  
19 the name of the charitable organization. The charitable  
20 organization shall maintain and administer the account and shall  
21 have sole control of all withdrawals."



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

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

- (1) The goods or services to be offered to the public;
- (2) The geographic area where, and the starting and final date when, the offering is to be made;
- (3) The manner in which the name of the charitable organization is to be used, including any representation to be made to the public as to the amount or per cent per unit of goods or services



1 purchased or used that is to benefit the charitable  
2 organization;

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

14 (5) The date when and the manner in which the benefit is  
15 to be conferred on the charitable organization[-],  
16 which date shall be within ninety days after the end  
17 of the charitable sales promotion and, for charitable  
18 sales promotions lasting more than one year, shall be  
19 within ninety days after the anniversary of the  
20 commencement of the promotion and within ninety days  
21 after the end of the charitable sales promotion.



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

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

13           "(b) A charitable organization ~~[with contributions in~~  
14 ~~excess of \$500,000 in the year covered by the annual financial~~  
15 ~~report and a charitable organization]~~ required to obtain an  
16 audit report by a governmental authority or a third party shall  
17 include with its annual financial report, an audit report,  
18 prepared in accordance with generally accepted accounting  
19 principles, by a certified public accountant.

20           (c) Each charitable organization filing a report required  
21 by this section shall pay a filing fee to the department based



1 on the total amount of its [~~gross revenues~~] total revenue during  
2 the time covered by the report at the close of the calendar or  
3 fiscal year adopted by the charitable organization as follows:

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

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





1       **"§467B-8 Information filed to become public records.**  
2       Statements, reports, professional fundraising counsel contracts  
3       or professional solicitor contracts, commercial co-venturer  
4       consents, and all other documents and information required to be  
5       filed under this chapter or by the attorney general shall become  
6       government records in the department and be open to the general  
7       public for inspection pursuant to chapter 92F; provided that  
8       information in any registration statement concerning the  
9       residential addresses of any officer or director or that  
10      identifies a charitable organization's financial or banking  
11      accounts and audited financial statements submitted by  
12      registered [~~charities~~] charitable organizations shall be  
13      confidential under chapter 92F."

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

16      **"§467B-11.5 Charitable organizations exempted from**  
17      **registration and financial disclosure requirements.** The  
18      following charitable organizations shall not be subject to  
19      sections 467B-2.1 and 467B-6.5, if the organization submits an  
20      application for an exemption to the department and the  
21      department approves the organization's application:



- 1       (1) Any duly organized religious corporation, institution,  
2       or society that is exempt from filing Form 990 with  
3       the Internal Revenue Service pursuant to section  
4       6033(a)(3)(A)(i) and (iii) and (C)(i) of the Internal  
5       Revenue Code, as amended;
- 6       (2) Parent-teacher associations;
- 7       (3) Any educational institution that is licensed or  
8       accredited by any of the following licensing or  
9       accrediting organizations or their successor  
10      organizations:
- 11      (A) Hawaii Association of Independent Schools;
- 12      (B) Hawaii Council of Private Schools;
- 13      ~~[(B)]~~ (C) Western Association of Schools and Colleges;
- 14      ~~[(C)]~~ (D) Middle States Association of Colleges and  
15      Schools;
- 16      ~~[(D)]~~ (E) New England Association of Schools and  
17      Colleges;
- 18      ~~[(E)]~~ (F) Higher Learning Commission;
- 19      ~~[(F)]~~ (G) Northwest Commission on Colleges and  
20      Universities;



- 1           ~~[(G)]~~   (H)   Southern Association of Colleges and  
2                               Schools;
- 3           ~~[(H)]~~   (I)   The National Association for the Education  
4                               of Young Children; or
- 5           ~~[(I)]~~   (J)   AdvancED;
- 6           (4)   Any organization exempt from taxation under section  
7                               501(c)(3) of the Internal Revenue Code expressly  
8                               authorized by, and having an established identity  
9                               with, an education institution accredited by one of  
10                              the accrediting agencies as provided in paragraph (3);  
11                              provided that the organization's solicitation of  
12                              contributions is primarily directed to the students,  
13                              alumni, faculty, and trustees of the institutions and  
14                              their respective families;
- 15           (5)   Any nonprofit hospital licensed by the State or any  
16                              similar provision of the laws of any other state;
- 17           (6)   Any corporation established by an act of the United  
18                              States Congress that is required by federal law to  
19                              submit to Congress annual reports, fully audited by  
20                              the United States Department of Defense, of its



1 activities including itemized accounts of all receipts  
2 and expenditures;

3 (7) Any agency of this State, another state, or the  
4 federal government; and

5 (8) Any charitable organization that normally receives  
6 less than \$25,000 in contributions annually, if the  
7 organization does not employ or compensate a  
8 professional solicitor or professional fundraising  
9 counsel. For purposes of this paragraph, an  
10 organization normally receives less than \$25,000 in  
11 contributions annually if, during the immediately  
12 preceding three fiscal years, it received, on average,  
13 less than \$25,000 in contributions.

14 The attorney general may require the application for exemption  
15 to be filed electronically with the department and may require  
16 the use of electronic signatures."

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

19 "(a) There shall be a written contract between a  
20 charitable organization and a professional fundraising counsel  
21 or professional solicitor that shall be filed by the



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

- 13 (1) The legal name and address of the charitable  
14 organization;
- 15 (2) A statement of the charitable purpose for which the  
16 solicitation campaign is being conducted;
- 17 (3) A statement of the respective obligations of the  
18 professional fundraising counsel or professional  
19 solicitor and the charitable organization;
- 20 (4) A statement of the guaranteed minimum percentage of  
21 the [~~gross~~] total receipts from contributions that



1 will be remitted to or retained by the charitable  
2 organization, if any, or, if the solicitation involves  
3 the sale of goods, services, or tickets to a  
4 fundraising event, the percentage of the purchase  
5 price that will be remitted to the charitable  
6 organization, if any. The stated percentage shall  
7 exclude any amount that the charitable organization is  
8 to pay as fundraising costs;

9 (5) Information concerning the compensation of the  
10 professional solicitor and fundraising counsel as  
11 follows:

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



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

13 (C) If the compensation of the fundraising counsel is  
14 not contingent on the number of contributions or  
15 amount of revenue received from the solicitation  
16 campaign, the compensation shall be stated in a  
17 dollar amount;

18 (6) The effective and termination dates of the contract  
19 or, if the contract does not have a set termination  
20 date, a clause allowing either party a reasonable  
21 period to terminate the contract or notify the other



1 party if either party chooses not to renew. The  
2 contract shall also contain the date services will  
3 commence with respect to solicitation in this State of  
4 contributions for a charitable organization;

5 (7) In the case of a professional fundraising counsel, a  
6 statement that the professional fundraising counsel  
7 will not at any time have custody or control of  
8 contributions;

9 (8) A statement that the charitable organization exercises  
10 control and approval over the content and volume of  
11 any solicitation; and

12 (9) Any other information required by the rules of the  
13 attorney general."

14 SECTION 8. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 9. This Act shall take effect on July 1, 2050.





**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" to conform with IRS form 990; 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. (SB2748 HD1)

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

