
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; 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) Any duly organized religious corporation, institution, or society that is exempt from filing Form 990 with the Internal Revenue Service pursuant to section 6033(a)(3)(A)(i) and (iii) and (C)(i) of the Internal Revenue Code, as amended;

(2) Parent-teacher associations;

(3) Any educational institution that is licensed or accredited by any of the following licensing or accrediting organizations or their successor organizations:

(A) Hawaii Association of Independent Schools;

(B) Hawaii Council of Private Schools;

~~[(B)]~~ (C) Western Association of Schools and Colleges;

~~[(C)]~~ (D) Middle States Association of Colleges and Schools;

~~[(D)]~~ (E) New England Association of Schools and Colleges;

~~[(E)]~~ (F) Higher Learning Commission;

~~[(F)]~~ (G) Northwest Commission on Colleges and Universities;



[~~(G)~~] (H) Southern Association of Colleges and
Schools;

~~[(H)]~~ (I) The National Association for the Education
of Young Children; or

~~[(I)]~~ (J) AdvancED;

(4) Any organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code expressly authorized by, and having an established identity with, an education institution accredited by one of the accrediting agencies as provided in paragraph (3); 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;

(5) Any nonprofit hospital licensed by the State or any similar provision of the laws of any other state;

(6) Any 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;

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

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

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

SECTION 7. 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



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 upon its approval.
17



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. (SD1)

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