

HB
945

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-2.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§467B-2.5 Professional solicitor financial reports;**
4 **contribution account.** (a) ~~[Within ninety days after a~~
5 ~~solicitation campaign or event has been completed or within~~
6 ~~ninety days of the anniversary of the commencement of a~~
7 ~~solicitation campaign lasting more than one year, a] A~~
8 professional solicitor shall file with the attorney general a
9 financial report for ~~[the]~~ any charitable solicitation
10 campaign, including gross revenue from Hawaii donors and
11 national gross revenue and an itemization of all expenses
12 incurred on a form prescribed by the attorney general ~~[–]~~ no
13 more than ninety days after the end of the solicitation
14 campaign and, for solicitation campaigns lasting more than
15 one year, within ninety days after each anniversary of the
16 commencement of the solicitation campaign and within ninety
17 days after the end of the solicitation campaign.

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

1 (c) A professional solicitor shall maintain during
2 each solicitation campaign and for not less than three years
3 after the completion of that campaign the following records,
4 which shall be available for inspection upon demand by the
5 attorney general:

6 (1) The date and amount of each contribution received
7 and the name and address of each contributor;

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

10 (3) Records of all revenue received and expenses
11 incurred in the course of the solicitation
12 campaign; and

13 (4) The location and account number of each bank or
14 other financial institution account in which the
15 professional solicitor has deposited revenue from
16 the solicitation campaign.

17 [~~(b)~~] (d) Any material change in any information filed
18 with the attorney general pursuant to this section shall be
19 reported in writing by the professional solicitor to the
20 attorney general not more than seven days after the change
21 occurs.

22 [~~(e)~~] (e) Each contribution in the control or custody of
23 the professional solicitor, in its entirety and within five days

1 of its receipt, shall be deposited in an account at a bank or
2 other federally insured financial institution, which shall be in
3 the name of the charitable organization. The charitable
4 organization shall maintain and administer the account and shall
5 have sole control of all withdrawals."

6 SECTION 2. Section 467B-5.5, Hawaii Revised Statutes, is
7 amended by amending subsections (b) and (c) to read as follows:

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

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

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

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

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

1 after the end of the charitable sales promotion.

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

12 SECTION 3. Section 467B-6.5, Hawaii Revised Statutes, is
13 amended by amending subsection (c) to read as follows:

14 "(c) Each charitable organization filing a report required
15 by this section shall pay a filing fee to the department based
16 on the [~~total~~] amount of its [~~gross revenues~~] total revenue
17 during the time covered by the report at the close of the
18 calendar or fiscal year adopted by the charitable organization
19 as follows:

20 (1) \$0, if [~~gross~~] total revenue is less than \$25,000;

21 (2) \$25, if [~~gross~~] total revenue is at least \$25,000 but
22 less than \$50,000;

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

14 For purposes of this subsection, the term "total revenue" means
15 the same as that used on the Internal Revenue Service Form 990,
16 regardless of which form, if any, is filed with the Internal
17 Revenue Service."

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

20 "**§467B-8 Information filed to become public records.**

21 Statements, reports, professional fundraising counsel contracts
22 or professional solicitor contracts, commercial co-venturer
23 consents, and all other documents and information required to be

H.B. NO. 945

1 filed under this chapter or by the attorney general shall become
2 government records in the department and be open to the general
3 public for inspection pursuant to chapter 92F; provided that
4 information in any registration statement concerning the
5 residential addresses of any officer or director or that
6 identifies a charitable organization's financial or banking
7 accounts and audited financial statements submitted by
8 registered [~~charities~~] charitable organizations shall be
9 confidential under chapter 92F."

10 SECTION 5. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 6. This Act shall take effect upon its approval.

13

14

INTRODUCED BY: Stan

15

BY REQUEST
JAN 22 2019

H.B. NO. 945

Report Title:

Charitable Organizations

Description:

Amends chapter 467B, Hawaii Revised Statutes, to replace the term "gross revenue" with "total revenue" and define the term "total revenue" for purposes of calculating the annual filing fee, clarify when professional solicitors must file financial reports, clarify when commercial co-venturers must provide a charitable organization with an accounting and the benefit, 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) replace the term "gross revenue" with "total revenue" and define the term "total revenue" for purposes of calculating the annual filing fee, (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, and (4) make other housekeeping amendments.

MEANS: Amend sections 467B-2.5, 467B-5.5(b) and (c), 467B-6.5(c), and 467B-8, 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, 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 and will provide the public with timely information about solicitation activities.

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.

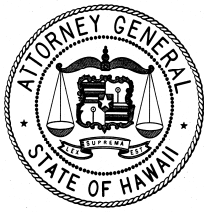
GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: ATG 100.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 945, RELATING TO CHARITABLE ORGANIZATIONS.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Friday, February 1, 2019

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Clare E. Connors, Attorney General, or
Patrick K. Kelly, Deputy Attorney General

Chair Takumi and Members of the Committee:

The Department of the Attorney General (Department) supports this bill. This bill amends Hawaii's charitable solicitation and registration law, chapter 467B, Hawaii Revised Statutes (HRS).

Specifically, this bill will: (1) clarify that the annual filing fees are based on the term "total revenue" as shown and calculated on the Internal Revenue Service (IRS) Form 990; (2) ensure that 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; (3) 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 for promotions lasting more than one year, within ninety days of the anniversary of the promotion; (4) protect audited financial statements from public disclosure for all charitable organizations, not just charities; and (5) make other housekeeping amendments.

This bill will assist the Department in oversight of charitable organizations and fundraising activities, will clarify regulatory procedures for the nonprofit sector, and will provide additional disclosures to the public.

We respectfully request that the Committee pass this bill as drafted.



UNIVERSITY of HAWAII
FOUNDATION

**TESTIMONY OF THE UNIVERSITY OF HAWAII FOUNDATION
ON HOUSE BILL NO. 945, RELATING TO CHARITABLE ORGANIZATIONS**

Hearing Date: February 1, 2019
Committee: Commerce and Consumer Protection
Time: 2:00 p.m.
Location: Room 329, State Capitol
Testifier Hugh R. Jones, In-House Counsel (956-6378)

The University of Hawaii Foundation (“UHF”), a private, nonprofit corporation, supports the passage of this bill that would clarify provisions of Hawaii’s charitable solicitation law, chapter 467B, HRS, however the UHF requests that the committee report the bill out with a friendly amendment, noted below.

House Bill No. 945 will make clarifying amendments to Hawaii’s charitable solicitation law. Specifically, this bill will (1) replace the term "gross revenue" with "total revenue" to be consistent with the Internal Revenue Service Form 990 "total revenue" amount, (2) ensure that 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

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financial report after the end of the campaign, and (3) 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, nonprofit corporation's law to clarify the role of non-voting directors of nonprofit corporations. UHF, like many Hawaii nonprofits have non-voting directors, or trustees on its board of directors, and this bill would provide greater clarity on this point.

These amendments will benefit, and protect the nonprofit sector as well as UHF. However, UHF requests that this Committee amend the bill to include a provision that was included last session's version of this bill (S.B. No. 2747) that was omitted from this year's version as introduced. Specifically, last year, the Department of the Attorney General proposed to repeal language in section 467B-6.5(b), HRS as follows:

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

The Department of the Attorney General supported the repeal of this language last year, that if adopted, would relieve registered charities from submitting an audited financial statement, if they are not already required to have such an audit due to externally imposed requirements.

The cost of auditing financial statements has increased significantly, and almost all of a

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registered charity's financial and operational data is reported on IRS Form 990 and filed with the Department of the Attorney General and available for public inspection online.

UHF requests the Committee's favorable consideration of this bill with the amendment noted above.

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**Testimony to the House Committee on Consumer Protection and Commerce
Representative Roy Takumi, Chair
Representative Linda Ichiyama, Vice Chair
Friday, February 1, 2019, 2:00 p.m.
Conference Room 329
HB 945 - Relating to Charitable Organizations**

Dear Chair Takumi, Vice-Chair Ichiyama and members of the CPC Committee:

On behalf of the Hawai'i Alliance of Nonprofit Organizations, I would like express **support of HB 945**, relating to charitable organizations.

Hawai'i Alliance of Nonprofit Organizations (HANO) is a statewide, sector-wide professional association of nonprofits. Our mission is to unite and strengthen the nonprofit sector as a collective force to improve the quality of life in Hawai'i. Our member organizations provide essential services to every community in the state.

HANO supports all changes being made in this bill including changing "gross revenue" to "total revenue," to conform with the Internal Revenue Service Form 990; clarifying when professional solicitors must file financial reports; and clarifying when commercial co-venturers must provide the charitable organization with an accounting and the benefit.

Additionally, we ask that you consider again a provision proposed last year to allow charitable organizations to submit financial audits only when it is already required of them by other external entities (i.e. accrediting bodies, government contracts). The proposed language is as follows:

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

Professional audits can be very expensive, especially for organizations that *just* meet the existing requirement of having contributions in excess of \$500,000 in a year.

We appreciate your consideration of this request to add this language. Thank you for the opportunity to submit testimony.

Mahalo,
Lisa Maruyama, President and CEO