

# S.B. NO. 1172

JAN 24 2019

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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-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.

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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.

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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;

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- 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

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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.

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INTRODUCED BY:                     *M. N. M.*                    

15

BY REQUEST



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**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.