

JAN 21 2010

A BILL FOR AN ACT

RELATING TO CAMPAIGN FINANCING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§11- Ballot issue committee; contributions and expenditures. (a) A ballot issue committee shall receive contributions or make expenditures only for or against any issue appearing on the ballot at the next applicable election.

(b) A ballot issue committee is prohibited from receiving contributions or making expenditures to influence the nomination or election of a candidate to office.

(c) If a ballot issue committee has surplus funds, the committee, within ninety days after the election for which the issue appeared on the ballot, shall return all surplus funds to the contributors or donate the funds to a community service, educational, youth, recreational, charitable, scientific, or literary organization. Surplus funds that are not returned or donated within ninety days after the election for which the



1 issue appeared on the ballot shall escheat to the Hawaii
2 election campaign fund.

3 (d) Every ballot issue committee shall submit a request to
4 terminate its registration to the commission as provided in
5 section 11-213 within ninety days after the election for which
6 the issue appeared on the ballot."

7 SECTION 2. Section 11-191, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By adding a new definition to be appropriately inserted
10 and to read:

11 "Automated phone call" means:

12 (1) Any outbound telephone call or electronic voice
13 message;

14 (2) The telephone call plays a recorded message; and

15 (3) (A) The recorded message advocates, supports, or
16 opposes the nomination or election of a
17 candidate; or

18 (B) Advocates, supports, or opposes a question or
19 issue certified to be on the ballot in the next
20 election."

21 2. By amending the definitions of "advertisement" and
22 "ballot issue committee" to read:



1 "Advertisement" means:

2 (1) Any communication, exclusive of bumper stickers or
3 other sundry items, that[+]

4 ~~-(A) Identifies]~~ identifies a candidate either
5 directly or by direct implication; and

6 ~~[-(B) Advocates]~~ advocates or supports the nomination
7 for election of the candidate;

8 ~~[-(C) Advocates]~~ advocates or supports the election of
9 the candidate; or

10 ~~[-(D) Advocates]~~ advocates or supports the candidate's
11 defeat.

12 (2) (A) Any communication, exclusive of bumper stickers
13 or other sundry items, that[+]

14 ~~-(A) Identifies]~~ identifies an issue or question that
15 will appear on the ballot at the next applicable
16 election; ~~[or]~~ and

17 (B) Advocates or supports the passage or defeat of
18 the question or issue.

19 "Ballot issue committee" means a committee as defined in
20 this section which has the exclusive purpose of ~~[making or~~
21 ~~accepting]~~ receiving contributions or making expenditures for or



1 against any issue appearing on the ballot at the next applicable
2 election."

3 SECTION 3. Section 11-193, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) The duties of the commission under this subpart are:

6 (1) To develop and adopt reporting forms required by this
7 subpart;

8 (2) To adopt and publish a manual for all candidates and
9 committees, describing the requirements of this
10 subpart, including uniform and simple methods of
11 recordkeeping;

12 (3) To preserve all reports required by this subpart for
13 at least ten years from the date of receipt;

14 (4) To permit the inspection, copying, or duplicating of
15 any report required by this subpart pursuant to rules
16 adopted by the commission; provided that no
17 information or copies from the reports shall be sold
18 or used by any person for the purpose of soliciting
19 contributions or for any commercial purpose;

20 (5) To ascertain whether any candidate, committee, or
21 party has failed to file a report required by this
22 subpart or has filed a substantially defective or



1 deficient report, and to notify these persons by first
2 class mail that their failure to file or filing of a
3 substantially defective or deficient report must be
4 corrected and explained, and that a [penalty] fine may
5 be assessed. All [penalties] fines collected under
6 [~~this~~] section 11-213.5 shall be deposited in the
7 general fund of the State;

8 (6) To hold public hearings;

9 (7) To investigate and hold hearings for receiving
10 evidence of any violations;

11 ~~[(8)] To adopt a code of fair campaign practices as a part~~
12 ~~of its rules;~~

13 ~~+(9)]~~ (8) To establish rules pursuant to chapter 91;

14 ~~[(10)]~~ (9) To request the initiation of prosecution for the
15 violation of this subpart pursuant to section 11-229;

16 ~~[(11)]~~ (10) To administer and monitor the distribution of
17 public funds under this subpart;

18 ~~[(12)]~~ (11) To suggest accounting methods for candidates,
19 parties, and committees, as the commission may deem
20 advisable, in connection with reports and records
21 required by this subpart;



1 ~~[(13)]~~ (12) To employ or contract, without regard to
2 chapters 76, 78, and 89 and section 28-8.3, and, at
3 pleasure, to dismiss persons it finds necessary for
4 the performance of its functions, including a full-
5 time executive director, and to fix their
6 compensation;

7 ~~[(14)]~~ (13) To do random audits, field investigations, as
8 necessary;

9 ~~[(15)]~~ (14) To file for injunctive relief when indicated;
10 and

11 ~~[(16)]~~ (15) To render advisory opinions upon the request of
12 any candidate, candidate committee, noncandidate
13 committee, or other person or entity subject to this
14 chapter, as to whether the facts and circumstances of
15 a particular case constitute or will constitute a
16 violation of the campaign spending laws. If no
17 advisory opinion is rendered within ninety days after
18 all information necessary to issue an opinion has been
19 obtained, it shall be deemed that an advisory opinion
20 was rendered and that the facts and circumstances of
21 that particular case do not constitute a violation of
22 the campaign spending laws. The opinion rendered or



1 deemed rendered, until amended or revoked, shall be
2 binding on the commission in any subsequent charges
3 concerning the candidate, candidate committee,
4 noncandidate committee, or other person or entity
5 subject to this chapter, who sought the opinion and
6 acted in reliance on it in good faith, unless material
7 facts were omitted or misstated by the persons in the
8 request for an advisory opinion. Nothing in this
9 section shall be construed to allow the commission to
10 issue rules through an advisory opinion."

11 SECTION 4. Section 11-199, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) All monetary contributions shall be promptly
14 deposited in [a] an account or accounts with a depository
15 institution, as defined by section 412:1-109, [~~duly authorized~~
16 ~~to do business in the State,~~] such as a bank, savings bank,
17 savings and loan association, depository financial services loan
18 company, or credit union[~~, intra-Pacific bank, or similar~~
19 ~~financial institution, the deposits or accounts of which are~~
20 ~~insured~~] at a branch of the depository institution in the State
21 as defined by section 412:3-501. The account must be:



- 1 (1) Insured by the Federal Deposit Insurance Corporation,
2 or the National Credit Union Administration [~~in~~];
3 (2) In the name of the candidate, committee, or party,
4 whichever is applicable[~~-~~]; and
5 (3) In an institution that is physically located in the
6 State."

7 SECTION 5. Section 11-204, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§11-204 Campaign contributions; limits as to persons.**

10 (a) (1) No person, including a noncandidate committee, or any
11 other entity shall make contributions to:

12 (A) A candidate seeking nomination or election to a
13 two-year office or to the candidate's committee
14 in an aggregate amount greater than \$2,000 during
15 an election period;

16 (B) A candidate seeking nomination or election to a
17 four-year statewide office or to the candidate's
18 committee in an aggregate amount greater than
19 \$6,000 during an election period; and

20 (C) A candidate seeking nomination or election to a
21 four-year nonstatewide office or to the



1 candidate's committee in an aggregate amount

2 greater than \$4,000 during an election period.

3 These limits shall not apply to a loan made to a
4 candidate by a financial institution in the ordinary
5 course of business;

6 (2) For purposes of this section, the length of term of an
7 office shall be the usual length of term of the office
8 as unaffected by reapportionment, a special election
9 to fill a vacancy, or any other factor causing the
10 term of the office the candidate is seeking to be less
11 than the usual length of term of that office.

12 (b) (1) No person or any other entity shall make
13 contributions to a noncandidate committee, in an
14 aggregate amount greater than \$1,000 in an
15 election[-]; except that in the case of a corporation
16 or company using funds from its treasury, there shall
17 be a \$ limit on contributions or expenditures to
18 the corporation or company's noncandidate committee;
19 and

20 (2) A corporation or company shall make all contributions
21 and expenditures greater than \$1,000 in the aggregate
22 in a two-year election period solely through the



1 corporation or company's noncandidate committee in
2 accordance with paragraph (a) (1). The noncandidate
3 committee shall register with the commission pursuant
4 to section 11-194.

5 (c) A candidate's immediate family, in making
6 contributions to the candidate's campaign, shall be exempt from
7 the above limitation, but shall be limited in the aggregate to
8 \$50,000 in any election period. The aggregate amount of \$50,000
9 shall include any loans made for campaign purposes to the
10 candidate from the candidate's immediate family.

11 (d) A contribution by a dependent minor shall be reported
12 in the name of the minor but shall be counted against the
13 contribution of the minor's parent or guardian.

14 (e) Any candidate, candidate's committee, or committee
15 that receives in the aggregate more than the applicable limits
16 set forth in this section in any primary, initial special,
17 special, or general election from a person, shall be required to
18 return any excess contribution to the original donor within
19 thirty days of receipt of the excess contribution. Any excess
20 contribution not returned to the original donor within thirty
21 days shall escheat to the Hawaii election campaign fund. A
22 candidate, candidate's committee, or committee who complies with



1 this subsection prior to the initiation of prosecution shall not
2 be subject to any penalty under section 11-228.

3 (f) All payments made by a person or political party whose
4 contributions or expenditure activity is financed, maintained,
5 or controlled by any corporation, labor organization,
6 association, political party, or any other person or committee,
7 including any parent, subsidiary, branch, division, department,
8 or local unit of the corporation, labor organization,
9 association, political party, political committees established
10 and maintained by a national political party, or any other
11 person, or by any group of those persons shall be considered to
12 be made by a single person or political party.

13 (g) An individual and any general partnership in which the
14 individual is a partner shall be treated as one person.

15 (h) No committee that supports or opposes a candidate for
16 public office shall have as officers individuals who serve as
17 officers on any other committee which supports or opposes the
18 same candidate. No such committee shall act in concert with, or
19 solicit or make contributions on behalf of, any other committee.

20 (i) No contributions or expenditures shall be made to or
21 on behalf of a candidate or committee by a foreign national or
22 foreign corporation, including a domestic subsidiary of a



1 foreign corporation, a domestic corporation that is owned by a
2 foreign national, or a local subsidiary where administrative
3 control is retained by the foreign corporation, and in the same
4 manner prohibited under 2 United States Code section 441e and 11
5 Code of Federal Regulations 110.20, as amended. No foreign-
6 owned domestic corporation shall make contributions where:

7 (1) Foreign national individuals participate in election-
8 related activities such as decisions concerning the
9 making of contributions or the administration of a
10 political committee; or

11 (2) The contribution funds are not domestically-derived.

12 (j) No person or any other entity other than political
13 committees established and maintained by a national political
14 party shall make contributions to a political party in an
15 aggregate amount greater than \$25,000 in any two-year election
16 period. No political committee established and maintained by a
17 national political party, shall make contributions to a
18 political party in an aggregate amount greater than \$50,000 in
19 any two-year election period. A company's noncandidate
20 committee may make a contribution to a party in accordance with
21 the same conditions and restrictions as applicable to a
22 "person."



1 (k) For the purpose of this section, "company" means a
2 corporation, partnership, limited liability company, limited
3 liability partnership, financial institution, or any other
4 entity engaged in business.

5 ~~[(k)]~~ (1) The contribution limits under this section shall
6 apply for the office sought by the candidate. This section
7 shall not apply to ballot issue committees."

8 SECTION 6. Section 11-213.5, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[~~f~~]§11-213.5[~~]~~ Failure to file report; filing a
11 substantially defective or deficient report. (a) True and
12 accurate reports shall be filed with the commission on or before
13 the due date specified in this subpart. [~~Any committee that is~~
14 ~~required to file reports under this subpart shall be subject to~~
15 ~~the penalties in this section if the report is not filed by the~~
16 ~~due date or if the report is substantially defective or~~
17 ~~deficient,~~] The commission may assess a fine against a
18 committee that is required to file a report under this subpart
19 if the report is not filed by the due date or if the report is
20 substantially defective or deficient, as determined by the
21 commission.



1 (b) The [~~penalty~~] fine for not filing a report by the due
2 date, if assessed, shall [~~be~~] not exceed \$50 per day for the
3 first seven days, beginning with the day after the due date of
4 the report, and shall not exceed \$200 per day thereafter[~~7~~];
5 provided that:

6 (1) In the aggregate, the fine shall not [~~to~~] exceed
7 twenty-five per cent of the total amount of
8 contributions or expenditures, whichever is greater,
9 for the period covered by the report; [~~provided that~~
10 ~~the~~] and

11 (2) The minimum [~~penalty~~] fine for a report filed more
12 than four days after the due date, if assessed, shall
13 be \$200.

14 (c) Subsection (b) notwithstanding, if a candidate's
15 committee does not file the second preliminary primary report or
16 the preliminary general report or if a noncandidate committee
17 does not file the preliminary primary report or the preliminary
18 general report by the due date, the fine, if assessed, shall
19 [~~be~~] not exceed \$300 per day[~~7~~]; provided that:

20 (1) In the aggregate, the fine shall not [~~to~~] exceed
21 twenty-five per cent of the total amount of
22 contributions or expenditures, whichever is greater,



1 for the period covered by the report; [~~provided that~~
2 ~~the~~] and

3 (2) The minimum [~~penalty~~] fine, if assessed, shall be
4 \$300.

5 (d) If the commission determines that a report is
6 substantially defective or deficient, the commission shall
7 notify the candidate's committee by first class mail that:

8 (1) The report is substantially defective or deficient;
9 and

10 (2) A [~~penalty~~] fine may be assessed.

11 (e) If the corrected report is not filed with the
12 commission's electronic filing system on or before the
13 fourteenth day after the notice of deficiency has been mailed,
14 the [~~penalty~~] fine, if assessed, for a substantially defective
15 or deficient report shall [~~be~~] not exceed \$50 per day for the
16 first seven days, beginning with the fifteenth day after the
17 notice was sent, and shall not exceed \$200 per day
18 thereafter[~~7~~]; provided that:

19 (1) In the aggregate, the fine shall not [~~to~~] exceed

20 twenty-five per cent of the total amount of

21 contributions or expenditures, whichever is greater,



1 for the period covered by the report; [~~provided that~~
2 ~~the~~] and

3 (2) The minimum [~~penalty~~] fine for not filing a corrected
4 report more than eighteen days after the notice was
5 sent, if assessed, shall be \$200.

6 (f) The commission shall publish on its website the names
7 of all candidate's committees that have failed to file a report
8 or to correct a report within the time allowed by the
9 commission.

10 (g) All penalties collected under this section shall be
11 deposited into the general fund."

12 SECTION 7. Section 11-215, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§11-215 Advertising.** (a) All advertisements shall
15 contain the name and address of the candidate, committee, party,
16 or person paying for the advertisement. If an advertisement is
17 not authorized by a candidate or a candidate's committee, the
18 advertisement shall contain the name and address of the person
19 paying for the advertisement.

20 (b) In addition to subsection (a), no candidate or
21 committee shall cause or submit any advertisement in support of
22 a candidate, against a candidate's opponent, or with regard to a



1 ballot issue to be published, broadcast, televised, or otherwise
2 circulated and distributed except under the following
3 conditions:

4 (1) The advertisement shall contain a notice in a
5 prominent location that the literature or
6 advertisement is published, broadcast, televised, or
7 circulated with the approval and authority of the
8 candidate, provided that in the event that the
9 literature or advertisement is paid for by a
10 candidate, committee directly associated with a
11 candidate, or ballot issue committee, the notice of
12 approval and authority need not be included; or

13 (2) The advertisement shall contain a notice in a
14 prominent location that the literature or
15 advertisement is published, broadcast, televised, or
16 circulated without the approval and authority of the
17 candidate.

18 (c) The information required in subsections (a) and (b)
19 shall be included on every web page containing an advertisement.

20 (d) The information required in subsections (a) and (b)
21 shall be stated at the beginning of an automated phone call.



1 ~~[(e)]~~ (e) The ~~[penalty]~~ fine for violating this section
2 shall be a fine not to exceed \$25 for each advertisement that
3 lacks the required disclaimer and no more than \$5,000
4 aggregate."

5 SECTION 8. Section 11-228, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) In the performance of its required duties, the
8 commission may render a decision or issue an order affecting any
9 person violating any provision of this subpart or section 281-22
10 that ~~[shall]~~ may provide for the assessment of ~~[an~~
11 ~~administrative]~~ a fine in the manner prescribed as follows:

12 (1) If a natural person, an amount not to exceed \$1,000
13 for each occurrence or an amount equivalent to three
14 times the amount of an unlawful contribution or
15 expenditure~~[, whichever is greater]~~; or

16 (2) If a corporation, organization, association, or labor
17 union, it shall be punished by a fine not exceeding
18 \$1,000 for each occurrence; and

19 (3) Whenever a corporation, organization, association, or
20 labor union violates this subpart, the violation shall
21 be deemed to be also that of the individual directors,
22 officers, or agents of the corporation, organization,



1 association, or labor union, who have knowingly
2 authorized, ordered, or done any of the acts
3 constituting the violation."

4 SECTION 9. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 10. This Act shall take effect upon its approval
7 and apply to contributions and expenditures occurring on or
8 after July 1, 2010; provided that sections 6 and 8 shall take
9 effect retroactive to July 8, 2008.

10
INTRODUCED BY: _____

BY REQUEST



Report Title:

Elections; Campaign Financing

Description:

Amends law relating to ballot issue committees. Defines automated phone call and requires certain information to be stated at the beginning of such phone calls. Amends the definition of advertisement. Repeals the campaign spending commission's authority to adopt a code of fair campaign practices as part of its rules. Requires advertising notices and disclaimers to be included on every web page that contains an advertisement.

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

