

JAN 23 2015

A BILL FOR AN ACT

RELATING TO FRIVOLOUS COMPLAINTS.

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

1 SECTION 1. Chapter 84, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§84- Filing of frivolous charges. (a) A person who
5 files a frivolous charge with the commission against any person
6 covered by this chapter shall be civilly liable to the person
7 charged for all costs incurred in defending the charge,
8 including but not limited to costs and attorneys' fees.

9 (b) In any case where the commission decides not to issue
10 a complaint in response to a charge, the commission shall, upon
11 the written request of the person charged, make a finding as to
12 whether or not the charge was frivolous. Before making a
13 determination that a complaint is frivolous, the commission
14 shall hold a hearing at which the complainant may be heard and
15 may be represented by counsel retained by the complainant.



1 (c) In deciding whether a complaint is frivolous, the
2 commission shall be guided by the Hawaii rules of civil
3 procedure and may also consider:

4 (1) The timing of the complaint with respect to when the
5 facts supporting the alleged violation became known or
6 should have become known to the complainant, and with
7 respect to the date of any pending election in which
8 the respondent is a candidate or is involved with a
9 candidacy, if any;

10 (2) The nature and type of any publicity surrounding the
11 filing of the complaint, and the degree of
12 participation by the complainant in publicizing the
13 fact that a complaint was filed with the commission;

14 (3) The existence and nature of any relationship between
15 the respondent and the complainant before the
16 complaint was filed;

17 (4) The existence and nature of any relationship between
18 the complainant and any candidate or group opposing
19 the respondent if the respondent is a candidate for
20 election to office;



1 (5) Any evidence that the complainant knew or reasonably
2 should have known that the allegations in the
3 complaint were groundless; and

4 (6) Any evidence of the complainant's motives in filing
5 the complaint.

6 (d) By a vote of three or more members of the commission,
7 the commission may issue an order to a complainant to show cause
8 as to why the commission should not determine that the complaint
9 filed by the complainant is frivolous. Notice of a hearing to
10 show cause must be given at least one business day prior to the
11 date of the hearing. Notice shall be sent by registered or
12 certified mail with request for a return receipt and marked
13 deliver to addressee only and shall include:

14 (1) An explanation of why the complaint appears to be
15 frivolous; and

16 (2) The date, time, and place of the hearing to show
17 cause.

18 (e) If the complaint is found to be unwarranted and
19 brought in bad faith or for the purpose of harassment, the
20 commission may impose a civil penalty of up to \$10,000 for the



1 first violation and \$25,000 for each subsequent violation
2 thereafter.

3 (f) The person charged may initiate an action in the
4 circuit court for recovery of fees and costs incurred in
5 commission proceedings within one year after the commission
6 renders a decision. The commission's decision shall be binding
7 upon the court for purposes of a finding pursuant to section
8 607-14.5."

9 SECTION 2. Section 84-31, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§84-31 Duties of commission; complaint, hearing,**
12 **determination.** (a) The ethics commission shall have the
13 following powers and duties:

14 (1) It shall prescribe forms for the disclosures required
15 by article XIV of the Hawaii [~~constitution~~] State
16 Constitution [~~and~~], section 84-17, and the gifts
17 disclosure statements required by section 84-11.5 and
18 shall establish orderly procedures for implementing
19 the requirements of those provisions;

20 (2) It shall render advisory opinions upon the request of
21 any legislator, employee, or delegate to the



1 constitutional convention, or person formerly holding
2 such office or employment as to whether the facts and
3 circumstances of a particular case constitute or will
4 constitute a violation of the code of ethics. If no
5 advisory opinion is rendered within thirty days after
6 the request is filed with the commission, it shall be
7 deemed that an advisory opinion was rendered and that
8 the facts and circumstances of that particular case do
9 not constitute a violation of the code of ethics. The
10 opinion rendered or deemed rendered, until amended or
11 revoked, shall be binding on the commission in any
12 subsequent charges concerning the legislator,
13 employee, or delegate to the constitutional
14 convention, or person formerly holding such office or
15 employment, who sought the opinion and acted in
16 reliance on it in good faith, unless material facts
17 were omitted or misstated by such persons in the
18 request for an advisory opinion;

- 19 (3) It shall initiate, receive, and consider charges
20 concerning alleged ~~[violation]~~ violations of this



1 chapter, initiate or make [~~investigation,~~

2 investigations, and hold hearings;

3 (4) It may subpoena witnesses, administer oaths, and take
4 testimony relating to matters before the commission
5 and require the production for examination of any
6 books or papers relative to any matter under
7 investigation or in question before the commission.

8 Before the commission shall exercise any of the powers
9 authorized in this section with respect to any
10 investigation or hearings it shall by formal
11 resolution, supported by a vote of three or more
12 members of the commission, define the nature and scope
13 of its inquiry;

14 (5) It may, from time to time adopt, amend, and repeal any
15 rules, not inconsistent with this chapter, that in the
16 judgment of the commission seem appropriate for the
17 carrying out of this chapter and for the efficient
18 administration thereof, including every matter or
19 thing required to be done or which may be done with
20 the approval or consent or by order or under the
21 direction or supervision of or as prescribed by the



1 commission. The rules, when adopted as provided in
2 chapter 91, shall have the force and effect of law;

3 (6) It shall have jurisdiction for purposes of
4 investigation and taking appropriate action on alleged
5 violations of this chapter in all proceedings
6 commenced within six years of an alleged violation of
7 this chapter by a legislator or employee or former
8 legislator or employee. A proceeding shall be deemed
9 commenced by the filing of a charge with the
10 commission or by the signing of a charge by three or
11 more members of the commission. Nothing herein shall
12 bar proceedings against a person who by fraud or other
13 device, prevents discovery of a violation of this
14 chapter;

15 (7) It shall distribute its publications without cost to
16 the public and shall initiate and maintain programs
17 with the purpose of educating the citizenry and all
18 legislators, delegates to the constitutional
19 convention, and employees on matters of ethics in
20 government employment; and



1 (8) It shall administer any code of ethics adopted by a
2 state constitutional convention, subject to the
3 procedural requirements of this part and any rules
4 adopted thereunder.

5 (b) Charges concerning the violation of this chapter shall
6 be in writing, signed by the person making the charge under
7 oath, except that any charge initiated by the commission shall
8 be signed by three or more members of the commission. The
9 commission shall notify in writing every person against whom a
10 charge is received and afford the person an opportunity to
11 explain the conduct alleged to be in violation of the chapter.
12 The commission may investigate, after compliance with this
13 section, such charges and render an informal advisory opinion to
14 the alleged violator. The commission shall investigate all
15 charges on a confidential basis, having available all the powers
16 herein provided, and proceedings at this stage shall not be
17 public. If the informal advisory opinion indicates a probable
18 violation, the person charged shall request a formal opinion or
19 within a reasonable time comply with the informal advisory
20 opinion. If the person charged fails to comply with such
21 informal advisory opinion or if a majority of the members of the



1 commission determine that there is probable cause for belief
2 that a violation of this chapter might have occurred, a copy of
3 the charge and a further statement of the alleged violation
4 shall be personally served upon the alleged violator. Service
5 shall be made by personal service upon the alleged violator
6 wherever found or by registered or certified mail with request
7 for a return receipt and marked deliver to addressee only. If
8 after due diligence service cannot be effected successfully in
9 accordance with the above, service may be made by publication if
10 so ordered by the circuit court of the circuit wherein the
11 alleged violator last resided. The state ethics commission
12 shall submit to the circuit court for its consideration in
13 issuing its order to allow service by publication an affidavit
14 setting forth facts based upon the personal knowledge of the
15 affiant concerning the methods, means, and attempts made to
16 locate and effect service by personal service or by registered
17 or certified mail in accordance with the above. Service by
18 publication when ordered by the court shall be made by
19 publication once a week for four successive weeks of a notice in
20 a newspaper of general circulation in the circuit of the alleged
21 violator's last known state address. The alleged violator shall



1 have twenty days after service thereof to respond in writing to
2 the charge and statement.

3 (c) If after twenty days following service of the charge
4 and further statement of alleged violation in accordance with
5 this section, a majority of the members of the commission
6 conclude that there is probable cause to believe that a
7 violation of this chapter or of the code of ethics adopted by
8 the constitutional convention has been committed, then the
9 commission shall set a time and place for a hearing, giving
10 notice to the complainant and the alleged violator. Upon the
11 commission's issuance of a notice of hearing, the charge and
12 further statement of alleged violation and the alleged
13 violator's written response thereto shall become public records.
14 The hearing shall be held within ninety days of the commission's
15 issuance of a notice of hearing. If the hearing is not held
16 within that ninety-day period, the charge and further statement
17 of alleged violation shall be dismissed; provided that any delay
18 that is at the request of, or caused by, the alleged violator
19 shall not be counted against the ninety-day period. All parties
20 shall have an opportunity (1) to be heard, (2) to subpoena
21 witnesses and require the production of any books or papers



1 relative to the proceedings, (3) to be represented by counsel
2 and (4) to have the right of cross-examination. All hearings
3 shall be in accordance with chapter 91. All witnesses shall
4 testify under oath and the hearings shall be open to the public.
5 The commission shall not be bound by the strict rules of
6 evidence but the commission's findings must be based upon
7 competent and substantial evidence. All testimony and other
8 evidence taken at the hearing shall be recorded. Copies of
9 transcripts of such record shall be available only to the
10 complainant and the alleged violator at their own expense, and
11 the fees therefor shall be deposited in the State's general
12 fund.

13 (d) A decision of the commission pertaining to the conduct
14 of any legislator, delegate to the constitutional convention, or
15 employee or person formerly holding such office or employment
16 shall be in writing and signed by three or more of the members
17 of the commission. A decision of the commission rendered after
18 a hearing together with findings and the record of the
19 proceeding shall be a public record.

20 ~~[(e) A person who files a frivolous charge with the~~
21 ~~commission against any person covered by this chapter shall be~~



~~civilly liable to the person charged for all costs incurred in
defending the charge, including but not limited to costs and
attorneys' fees. In any case where the commission decides not
to issue a complaint in response to a charge, the commission
shall upon the written request of the person charged make a
finding as to whether or not the charge was frivolous. The
person charged may initiate an action in the circuit court for
recovery of fees and costs incurred in commission proceedings
within one year after the commission renders a decision. The
commission's decision shall be binding upon the court for
purposes of a finding pursuant to section 607-14.5.~~

~~(f)]~~ (e) The commission shall cause to be published yearly
summaries of decisions, advisory opinions, and informal advisory
opinions. The commission shall make sufficient deletions in the
summaries to prevent disclosing the identity of persons involved
in the decisions or opinions where the identity of such persons
is not otherwise a matter of public record under this chapter."

SECTION 3. Section 607-14.5, Hawaii Revised Statutes, is
amended to read as follows:

"§607-14.5 Attorneys' fees and costs in civil actions.

(a) In any civil action in this State where a party seeks money



1 damages or injunctive relief, or both, against another party,
2 and the case is subsequently decided, the court may, as it deems
3 just[,—assess]:

4 (1) Assess against either party, whether or not the party
5 was a prevailing party, and enter as part of its
6 order, for which execution may issue, a reasonable sum
7 for attorneys' fees and costs, in an amount to be
8 determined by the court upon a specific finding that
9 all or a portion of the party's claim or defense was
10 frivolous as provided in subsection (b) [—]; or

11 (2) Hold a party in criminal contempt of court pursuant to
12 subsection (d).

13 (b) In determining the award of attorneys' fees and costs
14 and the amounts to be awarded, the court must find in writing
15 that all or a portion of the claims or defenses made by the
16 party are frivolous and are not reasonably supported by the
17 facts and the law in the civil action. In determining whether
18 claims or defenses are frivolous, the court may consider whether
19 the party alleging that the claims or defenses are frivolous had
20 submitted to the party asserting the claims or defenses a
21 request for their withdrawal as provided in subsection (c). If



1 the court determines that only a portion of the claims or
2 defenses made by the party are frivolous, the court shall
3 determine a reasonable sum for attorneys' fees and costs in
4 relation to the frivolous claims or defenses.

5 (c) A party alleging that claims or defenses are frivolous
6 may submit to the party asserting the claims or defenses a
7 request for withdrawal of the frivolous claims or defenses, in
8 writing, identifying those claims or defenses and the reasons
9 they are believed to be frivolous. If the party withdraws the
10 frivolous claims or defenses within a reasonable length of time,
11 the court shall not award attorneys' fees and costs based on
12 those claims or defenses under this section.

13 (d) If a party:

14 (1) Brings a fictitious suit or files a fictitious
15 pleading in a civil action in this State to obtain an
16 opinion of the court; or

17 (2) In a pleading for a civil action in this State, makes
18 statements that the party knows to be groundless or
19 false for the purpose of securing a delay of the trial
20 of the case,



1 that party shall be held in criminal contempt of court, subject
2 to penalties under section 710-1077.

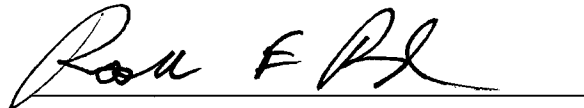
3 If a pleading, motion, or other paper is signed in
4 violation of this subsection, the court, upon motion or upon its
5 own initiative, after notice and hearing, shall impose an
6 appropriate sanction upon the person who signed it, a
7 represented party, or both."

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

10 SECTION 5. This Act shall take effect upon its approval.

11

INTRODUCED BY:











S.B. NO. 587

Report Title:

State Ethics Commission; Public Officers and Employees;
Frivolous Complaints

Description:

Requires the state ethics commission to hold a hearing prior to determining if a complaint is frivolous and lists evidence that may be considered by the commission in making a determination. Allows the commission, by a majority vote, to order a complainant to show cause as to why the commission should not determine that the complaint is frivolous. Requires notice be sent to the complainant by registered or certified mail at least one business day prior to the hearing.

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

