

JAN 26 2022

A BILL FOR AN ACT

RELATING TO CAMPAIGN FINANCE.

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

1 SECTION 1. The legislature finds while the people have a
2 right to know the identities of those who are attempting to
3 influence elections, it is often difficult or even impossible to
4 trace the true source of money that is behind election
5 advertisements. Transparency is a key factor for a healthy and
6 strong democracy, as it enables voters to have accurate
7 information they need to evaluate candidates for public office
8 and to hold them accountable if elected. Unfortunately,
9 existing law does not prevent the deception currently practiced
10 by some people and corporations that transfer their money to
11 other entities and hide their true identities when purchasing
12 campaign advertisements.

13 The purpose of this Act is to require any person who acts
14 as a conduit of at least \$10,000 in certain campaign-related
15 activities within any two-year election period to maintain
16 records and file reports regarding large contributions received
17 and to disclose the sources of the contributions.



SECTION 2. Chapter 11, Hawaii Revised Statutes, is amended by adding a new subpart to part XIII to be appropriately designated and to read as follows:

" . Disclosures of Independent Campaign Spending

§11-A Definitions. As used in this subpart, unless the context requires otherwise:

"Business income" means:

(1) Funds received by a person in commercial transactions in the ordinary course of the person's regular trade, business, or investments; or

(2) Membership or union dues to the extent that they do not exceed \$5,000 from any person in a calendar year.

"Covered person" means any person that spends at least \$10,000 in any two-year election period on independent campaign spending, or that accepts at least \$10,000 in any two-year election period in in-kind contributions to enable independent campaign spending.

"Covered person" does not include:

(1) Any individual who spends only the individual's own personal funds for independent campaign spending;



(2) Any person that spends only the person's own business income for independent campaign spending; and

(3) Any candidate, candidate committee, or noncandidate committee that receives no more than \$6,000 in contributions from any one person in an election period.

"General treasury" means any funds that are not traceable funds.

"Identity" means:

(1) In the case of an individual, the name, mailing address, occupation, and employer of the individual; or

(2) In the case of a person other than an individual, the full name; address; federal tax status; and state in which the person is registered as a partnership, incorporated, or organized as a limited liability company, if applicable.

"Independent campaign spending" means any disbursement of funds to finance the following, without any express or implied agreement with, or any general or particular understanding with,



1 or pursuant to any request by or communication with a candidate
2 or candidate committee:

3 (1) Any public communication that:

4 (A) Expressly advocates for or against the nomination
5 or election of a candidate;

6 (B) Promotes, supports, attacks, or opposes a
7 candidate, regardless of whether the
8 communication expressly advocates the election or
9 defeat of the candidate;

10 (C) Refers to a clearly identified candidate at any
11 time beginning one hundred twenty days before a
12 primary or initial special election through the
13 general or special election, and is disseminated
14 in the jurisdiction where the candidate's
15 election is taking place, regardless of whether
16 the communication expressly advocates the
17 election or defeat of the candidate; or

18 (D) Promotes, supports, attacks, or opposes the
19 placement of, or approval of, a ballot question,
20 initiative, or measure before the voters of any
21 local jurisdiction, regardless of whether the



1 communication expressly advocates for or against
2 the placement or approval;

3 (2) Partisan voter activity, partisan voter registration,
4 partisan get-out-the-vote activity, or other partisan
5 campaign-related activity; or

6 (3) Research, design, production, polling, data analytics,
7 mailing or social media list acquisition, or other
8 actions or activities conducted in preparation for or
9 conjunction with activities described in paragraph

10 (1)(A) or (B).

11 "Independent campaign spending" does not include any
12 disbursement of funds to finance coordinated activity as defined
13 in section 11-363.

14 "Original funds" means the business income of a person or
15 the personal funds of an individual.

16 "Personal funds" means:

17 (1) Any asset over which an individual had legal control
18 and rightful title at the time the individual engaged
19 in independent campaign spending or transferred funds
20 to another person for that spending;

21 (2) Income received by an individual, including:



1 (A) Any salary or other earned income from bona fide
2 employment;

3 (B) Dividends and proceeds from the individual's
4 personal investments; and

5 (C) Bequests to the individual, including income from
6 trusts established by bequests; and

7 (3) Of the assets that are jointly owned by the individual
8 and the individual's spouse, the portion that is:

9 (A) Equal to the individual's share of the asset
10 under the instrument of conveyance or ownership;
11 or

12 (B) The value of one-half of the property, if no
13 specific share is indicated by an instrument of
14 conveyance or ownership.

15 "Personal funds" does not include any asset or income
16 received from any person for the purpose of influencing any
17 election.

18 "Public communication" means any communication to the
19 general public through broadcast, cable, satellite, the internet
20 or other digital means, a newspaper, a magazine, an outdoor
21 advertising facility, mass mailing, telephones, or any other



1 form of general public political advertising or marketing,
2 regardless of medium.

3 "Traceable funds" means funds that:

- 4 (1) Have been contributed to a covered person and over
5 which the contributor has not exercised the option
6 under section 11-D to exclude from the use or transfer
7 of funds for independent campaign spending; or
8 (2) Are used to finance in-kind contributions to a covered
9 person to enable independent campaign spending.

10 "Transfer record" means a written record of identity of the
11 persons who directly or indirectly contributed or transferred
12 original funds used for independent campaign spending, the
13 amounts of those contributions or transfers, and how those funds
14 are disbursed.

15 **§11-B Independent campaign spending; entities under a**
16 **person's control.** The amount of a person's independent campaign
17 spending includes independent campaign spending made by entities
18 established, financed, maintained, or controlled by the person.

19 **§11-C Transfer records.** A covered person shall maintain
20 transfer records if the person spends at least \$10,000 in a two-
21 year election period on independent campaign spending, or



1 accepts at least \$10,000 in a two-year election period of in-
2 kind contributions to enable independent campaign spending.

3 **§11-D Contributors; consent.** Before a covered person may
4 use or transfer a contributor's funds for independent campaign
5 spending, the covered person shall provide the contributor with
6 a written notice that:

7 (1) Shall inform the contributor that the contributed
8 funds may be used for independent campaign spending
9 within the State and that the covered person may need
10 to report information about the contributor to the
11 commission for disclosure to the public;

12 (2) Shall inform the contributor that the contributor may
13 exclude the contributed funds from the intended use or
14 transfer for independent campaign spending by
15 providing the covered person with a written request
16 within twenty-one days after the contributor's receipt
17 of the notice; and

18 (3) May be provided to the contributor before, after, or
19 at the same time the covered person receives the
20 contribution; provided that the contributed funds
21 shall not be used or transferred for independent



1 campaign spending until the twenty-second day after
2 the contributor receives the notice or provides
3 written consent for the intended use or transfer,
4 whichever occurs first.

5 **§11-E Major contributors.** (a) Any person that
6 contributes at least \$10,000 in the aggregate in traceable funds
7 in a two-year election period to a covered person shall inform
8 the covered person, within ten days of receiving a written
9 request from the covered person, of the identities of persons
10 that directly or indirectly contributed at least \$1,000 in
11 original funds transferred, the amounts of the persons' original
12 funds transferred, and any persons that have previously
13 transferred the original funds. If more than one transfer has
14 previously occurred, the contributor shall disclose all the
15 previous transfers and intermediaries. The contributor shall
16 maintain these records for at least five years and shall provide
17 them to the commission upon request.

18 (b) Any person that makes an in-kind contribution to a
19 covered person of at least \$10,000 in a two-year election period
20 for the purpose of enabling independent campaign spending shall
21 inform the covered person, at the time the in-kind contribution



1 is made or promised to be made, of the identities of persons
2 that directly or indirectly contributed or provided at least
3 \$1,000 in original funds to finance the in-kind contribution,
4 the amounts of funds used from each persons' original funds, and
5 any persons who had previously transferred the original funds.
6 If more than one transfer previously occurred, the in-kind
7 contributor shall disclose all the previous transfers and
8 intermediaries. The in-kind contributor shall maintain these
9 records for at least five years and shall provide them to the
10 commission upon request.

11 **§11-F Disclosure reports.** (a) Within ten days of a
12 covered person's initial disbursement of \$10,000 in the
13 aggregate in funds on independent campaign spending during a
14 two-year election period, or a covered person's acceptance of at
15 least \$10,000 of in-kind contributions in the aggregate to
16 enable independent campaign spending during a two-year election
17 period, the covered person shall electronically file with the
18 commission an initial report that discloses:

- 19 (1) The identity of any person that owns or controls any
20 traceable funds, as applicable;



(2) The identity of any affiliated person that maintains its own transfer records and that person's relationship to the covered person;

(3) The name, address, and position of the individual who is the custodian of the transfer records;

(4) The name, address, and position of at least one individual authorized to directly or indirectly control how the traceable funds are disbursed;

(5) The total amount of traceable funds owned or controlled by the covered person on the date of the report;

(6) Each contributor of original funds that has directly or indirectly contributed more than \$1,000 of traceable funds or in-kind contributions during the two-year election period to the covered person, and the date and amount of each of the contributor's contributions;

(7) The identity of each person that acted as an intermediary and that transferred traceable funds in whole or part from an original source to the covered



1 person, and the date, amount, and original and
2 intermediate sources, of the transferred funds;

3 (8) The identity of each person that received from the
4 covered person disbursements of at least \$1,000 in the
5 aggregate of traceable funds during the two-year
6 election period and the date and purpose of each
7 disbursement, including the full name and office
8 sought of any candidate that was supported, opposed,
9 or referenced in a public communication that was
10 financed, in whole or part, with the disbursement; and

11 (9) The identity of any person that was the contributor of
12 the majority of the traceable funds in the covered
13 person's custody at the beginning of the two-year
14 election period.

15 (b) Within ten days after a covered person has disbursed
16 an additional \$10,000 in the aggregate in funds on independent
17 campaign spending during the two-year election period described
18 in subsection (a), or receives an additional \$10,000 of in-kind
19 contributions in the aggregate to enable independent campaign
20 spending during the two-year election period described in
21 subsection (a), the covered person shall electronically file



1 with the commission a subsequent report. Each subsequent report
2 shall disclose what, if any, information has changed from the
3 initial report.

4 (c) If information reported pursuant to subsection (a) is
5 changed but has not yet been reported pursuant to subsection
6 (b), the covered person, within twenty days after the change is
7 made, shall electronically file with the commission a report
8 that includes the updated information; provided that the covered
9 person shall not be required to report any changes that occur
10 more than two years after the filing of the most recent report
11 required by this section.

12 (d) Except as provided in subsection (e), a noncandidate
13 committee that is also a covered person may satisfy the timing
14 requirements for reports required by this section by filing a
15 report required by section 11-336 that also includes the
16 information required by this section.

17 (e) If a noncandidate committee is a covered person that
18 is required to file a report under this section, and the
19 deadline for the filing of the report based on the requirements
20 of subsection (a) or (b) is within fourteen days before an
21 election, the noncandidate committee shall instead file the



1 report within the three days after the applicable aggregate
2 monetary amount as described in subsection (a) or (b) is met.

3 **§11-G Identification of certain top contributors.** (a)

4 Except as otherwise provided by this section, any public
5 communication funded by independent campaign spending by a
6 covered person or created through any in-kind contribution
7 received by a covered person shall include a notice that
8 includes:

9 (1) Any information required by section 11-391; and

10 (2) The words: "The three top contributors who helped pay
11 for this message are", followed by the names of the
12 three top contributors as determined pursuant to
13 subsection (c).

14 (b) If the public communication:

15 (1) Has a visual component, a notice required by this
16 section shall be displayed in clear and conspicuous
17 text;

18 (2) Has an audio component, a notice required by this
19 section shall be stated by an audible voice in a clear
20 and conspicuous manner; or



(3) Is disseminated on the internet or by other digital means:

(A) As a text or graphic communication, a notice required by this section shall appear:

- (i) In letters that are at least large as the majority of the text in the communication;
- (ii) In a box to set the notice apart from the other contents of the communication; and
- (iii) In text in a color that has a reasonable degree of contrast with the color of the background behind the text;

(B) As an audio communication, a notice required by this section shall be spoken in a clearly audible and intelligible voice that is heard over a four-second or longer period at the beginning or end of the communication;

(C) As a communication that includes both a video and an audio component, a notice required by this section:

- (i) Shall be displayed in a manner that complies with subparagraph (A) and shall be displayed



1 at the same time any notice is spoken

2 pursuant to clause (ii); and

3 (ii) Shall be spoken in a manner that complies
4 with subparagraph (B); provided that if the
5 communication is less than ten seconds long,
6 the audio version of the notice may be
7 excluded;

8 (D) In a format other than the formats described in
9 subparagraphs (A) to (C), a notice required by
10 this section shall be included in the
11 communication as described in subparagraph (A),
12 (B), or (C) to the extent possible for the
13 format; provided that the notice is clear and
14 conspicuous;

15 (E) In a manner or format that makes it technically
16 impossible to include the notice described
17 subsection (a) in the communication, the notice
18 described in subsection (a) may be excluded from
19 the public communication; provided that the
20 communication shall include an alternative notice
21 that shall:



(i) State the name of the person that paid for the public communication; and

(ii) Provide means for a recipient of the public communication to immediately obtain the information described in subsection (a) with minimal effort and without requiring the recipient to receive or view any additional material, other than the information described in subsection (a); and

(F) Is not in compliance with this section if the required notice would be difficult to read, difficult to hear, or if its placement would likely be overlooked by a recipient of the communication.

(c) For the purposes of determining the persons that are to be top three contributors as described in subsection (a)(2):

(1) The top three contributors shall be determined by calculating the three contributors of traceable funds that have directly or indirectly contributed to the covered person:



1 (A) The highest amounts of original funds during the
2 two-year election period; or

3 (B) If the covered person is a noncandidate
4 committee, the highest amounts of original funds
5 to the general treasury of the noncandidate
6 committee;

7 (2) Contributions of traceable funds made in prior two-
8 year election periods shall be considered to have been
9 contributed in the current two-year election period:

10 (A) If the contributor's aggregate contributions of
11 original funds to the covered person constituted
12 the majority of the covered person's traceable
13 funds at the beginning of the two-year election
14 period; or

15 (B) If the reporting person is a noncandidate
16 committee, the contributor's aggregate
17 contributions to the general treasury of the
18 noncandidate committee constituted the majority
19 of the funds in that treasury at the beginning of
20 the two-year election period;



1 (3) If multiple contributors have contributed identical
2 amounts to a covered person so that there is no
3 difference in the amounts contributed by the third-
4 highest contributor and the fourth-highest or lower-
5 level contributor, the contributor that most recently
6 contributed to the covered person shall be deemed a
7 top three contributor;

8 (4) No contributor of traceable funds shall be deemed a
9 top three contributor if the aggregate amount of the
10 contributor's contributions of original funds to the
11 covered person during the two-year election period is
12 less than \$10,000; and

13 (5) To the extent that fewer than three contributors meet
14 the \$10,000 threshold in paragraph (4), an
15 intermediary that directly or indirectly transferred
16 at least \$10,000 in traceable funds to the covered
17 person during the two-year election period shall be
18 treated as the original source of funds.

19 **§11-H Structured transactions; prohibited.** No person may
20 structure or assist in structuring, or attempt to structure or
21 assist in structuring, any solicitation, contribution,



1 expenditure, disbursement, or other transaction to evade the
2 reporting requirements of this subpart.

3 **§11-I Penalties.** Any person who violates this subpart or
4 any rule adopted by the commission pursuant to this subpart
5 shall pay an administrative fine in an amount not less than the
6 amount contributed or spent in violation of this subpart, nor
7 more than twice the amount contributed or spent in violation of
8 this subpart; provided that if the amount contributed or spent
9 in violation of this subpart was less than \$5,000, the maximum
10 fine shall be \$10,000.

11 **§11-J Rules.** The commission shall adopt rules, pursuant
12 to chapter 91, necessary for the purposes of this subpart."

13 SECTION 3. Section 11-341, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) Each statement of information shall contain the
16 following:

- 17 (1) The name of the person making the expenditure, name of
18 any person or entity sharing or exercising discretion
19 or control over the person, and the custodian of the
20 books and accounts of the person making the
21 expenditure;



1 (2) The names and titles of the executives or board of
2 directors who authorized the expenditure, if the
3 expenditure was made by a noncandidate committee,
4 business entity, or an organization;

5 (3) The state of incorporation or formation and principal
6 address of the noncandidate committee, business
7 entity, or organization or for an individual, the
8 name, address, occupation, and employer of the
9 individual making the expenditure;

10 (4) The amount of each expenditure during the period
11 covered by the statement and the identification of the
12 person to whom the expenditure was made;

13 (5) The elections to which the electioneering
14 communications pertain and the names of any clearly
15 identifiable candidates and whether those candidates
16 are supported or opposed;

17 (6) If the expenditures were made by a noncandidate
18 committee, the names and addresses of all persons who
19 contributed to the noncandidate committee for the
20 purpose of publishing or broadcasting the
21 electioneering communications;



1 (7) If the expenditures were made by an organization other
2 than a noncandidate committee, the names and addresses
3 of all persons who contributed to the organization for
4 the purpose of publishing or broadcasting the
5 electioneering communications;

6 (8) Whether any electioneering communication is made in
7 coordination, cooperation, or concert with or at the
8 request or suggestion of any candidate, candidate
9 committee, or noncandidate committee, or agent of any
10 candidate if any, and if so, the identification of the
11 candidate, candidate committee, or noncandidate
12 committee, or agent involved; and

13 (9) The three top contributors as required under section
14 ~~[11-393,]~~ 11-G, if applicable."

15 SECTION 4. Section 11-393, Hawaii Revised Statutes, is
16 repealed.

17 ~~["§11-393] Identification of certain top contributors to~~
18 ~~noncandidate committees making only independent expenditures.~~

19 ~~(a) An advertisement shall contain an additional notice in a~~
20 ~~prominent location immediately after or below the notices~~
21 ~~required by section 11-391, if the advertisement is broadcast,~~



~~televised, circulated, or published, including by electronic means, and is paid for by a noncandidate committee that certifies to the commission that it makes only independent expenditures. This additional notice shall start with the words, "The three top contributors for this advertisement are", followed by the names of the three top contributors, as defined in subsection (c), who made the highest aggregate contributions to the noncandidate committee for the purpose of funding the advertisement; provided that:~~

~~(1) If a noncandidate committee is only able to identify two top contributors who made contributions for the purpose of funding the advertisement, the additional notice shall start with the words, "The two top contributors for this advertisement are", followed by the names of the two top contributors;~~

~~(2) If a noncandidate committee is able to identify only one top contributor who made contributions for the purpose of funding the advertisement, the additional notice shall start with the words, "The top contributor for this advertisement is", followed by the name of the top contributor;~~



~~(3) If a noncandidate committee is unable to identify any top contributors who made contributions for the purpose of funding the advertisement, the additional notice shall start with the words, "The three top contributors for this noncandidate committee are", followed by the names of the three top contributors who made the highest aggregate contributions to the noncandidate committee; and~~

~~(4) If there are no top contributors to the noncandidate committee, the noncandidate committee shall not be subject to this section.~~

~~In no case shall a noncandidate committee be required to identify more than three top contributors pursuant to this section.~~

~~(b) If a noncandidate committee has more than three top contributors who contributed in equal amounts, the noncandidate committee may select which of the top contributors to identify in the advertisement; provided that the top contributors not identified in the advertisement did not make a higher aggregate contribution than those top contributors who are identified in the advertisement. The additional notice required for~~



~~1 noncandidate committees described under this subsection shall
2 start with the words "Three of the top contributors for this
3 advertisement are" or "Three of the top contributors to this
4 noncandidate committee are", as appropriate, followed by the
5 names of the three top contributors.~~

~~6 (c) This section shall not apply to advertisements
7 broadcast by radio or television of such short duration that
8 including a list of top contributors in the advertisement would
9 constitute a hardship to the noncandidate committee paying for
10 the advertisement. A noncandidate committee shall be subject to
11 all other requirements under this part regardless of whether a
12 hardship exists pursuant to this subsection. The commission
13 shall adopt rules pursuant to chapter 91 to establish criteria
14 to determine when including a list of top contributors in an
15 advertisement of short duration constitutes a hardship to a
16 noncandidate committee under this subsection.~~

~~17 (d) Any noncandidate committee that violates this section
18 shall be subject to a fine under section 11-410.~~

~~19 (e) For purposes of this part, "top contributor" means a
20 contributor who has contributed an aggregate amount of \$10,000~~



1 ~~or more to a noneandidate committee within a twelve-month period~~
2 ~~prior to the purchase of an advertisement."]~~

3 SECTION 5. In codifying the new sections added by
4 section 2 of this Act, the revisor of statutes shall substitute
5 appropriate section numbers for the letters used in designating
6 the new sections in this Act.

7 SECTION 6. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

10 SECTION 7. If any provision of this Act, or the
11 application thereof to any person or circumstance, is held
12 invalid, the invalidity does not affect other provisions or
13 applications of the Act that can be given effect without the
14 invalid provision or application, and to this end the provisions
15 of this Act are severable.

16 SECTION 8. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.



1 SECTION 9. This Act shall take effect upon its approval;
2 provided that this Act shall apply beginning with the 2022
3 primary election.

4

INTRODUCED BY:





S.B. NO. 3164

Report Title:

Campaign Spending Commission; Independent Campaign Spending

Description:

Requires the maintenance of transfer records relating to certain campaign contributions and transfers. Requires certain covered persons to seek permission from contributors to use of transfer contributed funds for independent campaign spending. Requires certain major contributors to disclose and maintain relevant records relating to the identities of other contributors. Requires certain covered persons to file disclosure reports with the Campaign Spending Commission. Facilitates the identification of certain top contributors of funds for certain political advertisements. Prohibits structured transactions.

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