

ACT 163

H. B. NO. 54

A Bill for an Act Relating to Standards of Conduct for State Legislators and Employees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 84, Hawaii Revised Statutes, is amended to read:

**“CHAPTER 84
STANDARDS OF CONDUCT**

PREAMBLE

The purpose of this chapter is to (1) prescribe standards of conduct for elected officers and public employees of the State as mandated by the people

of the State of Hawaii in the Hawaii Constitution, Article XIV, Sec. 5; (2) educate the citizenry with respect to ethics in government; and (3) establish an ethics commission which will render advisory opinions and enforce the provisions of this law so that public confidence in public servants will be preserved.

PART I.
GENERAL PROVISIONS.

Section 84-1 Construction. This chapter shall be liberally construed to promote high standards of ethical conduct in state government.

Section 84-2 Applicability. This chapter shall apply to every nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and persons under contract to the State, but excluding justices, judges, and magistrates.

Section 84-3 Definitions.

- (1) 'Business' includes a corporation, a partnership, a sole proprietorship, a trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.
- (2) 'Compensation' means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.
- (3) 'Controlling interest' means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest be greater or less than fifty per cent.
- (4) 'Employee' means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State, but excluding legislators, justices, judges, and magistrates.
- (5) 'Employment' means any rendering of services for compensation.
- (6) 'Financial interest' means an interest held by an individual, his spouse, or minor children which is:
 - (A) An ownership interest in a business.
 - (B) A creditor interest in an insolvent business.
 - (C) An employment, or prospective employment for which negotiations have begun, or
 - (D) An ownership interest in real or personal property.
 - (E) A loan or other debtor interest.
 - (F) A directorship or officership in a business.
- (7) 'Official act' or 'official action' means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.
- (8) 'Official authority' includes administrative or legislative powers of decision, recommendation, approval, disapproval, or other discretionary action.

- (9) 'State agency' includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices, the University of Hawaii, and all independent commissions and other establishments of the state government but excluding the courts.

PART II. SPECIFIC STANDARDS

Section 84-11 Gifts. No legislator or employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence him in the performance of his official duties or is intended as a reward for any official action on his part.

Section 84-12 Confidential information. No legislator or employee shall disclose information which by law or practice is not available to the public and which he acquires in the course of his official duties, or use the information for his personal gain or for the benefit of anyone.

Section 84-13 Fair Treatment. No legislator or employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others; including but not limited to the following:

- (1) Seeking other employment or contract for services for himself by the use or attempted use of his office or position.
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of his official duties or responsibilities except as provided by law.
- (3) Using State time, equipment or other facilities for private business purposes.
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom he inspects or supervises in his official capacity.

Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, serving on committees or from making statements or taking action in the exercise of his legislative functions. Every legislator shall file a full and complete public disclosure of the nature and extent of the interest or transaction which he believes may be affected by legislative action.

Section 84-14 Conflicts of interests. (a) No employee shall take any official action directly affecting:

- (1) A business or other undertaking in which he has a substantial financial interest; or
- (2) A private undertaking in which he is engaged as legal counsel, advisor, consultant, representative, or other agency capacity;

Except that a department head who is unable to disqualify himself on any matter described in items (1) and (2) above will not be in violation of

this subsection if he has complied with the disclosure requirements of Section 84-17; and

Except that a member of a board, commission or committee, whose participation is necessary in order to constitute a quorum to conduct official business on any matter described in items (1) and (2) above, will not be in violation of this subsection if he has complied with the disclosure requirements of Section 84-17.

(b) No employee shall acquire financial interests in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him.

(c) No legislator or employee shall assist any person or business or act in a representative capacity before any State or county agency for a contingent compensation in any transaction involving the State.

(d) No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he has participated or will participate as a legislator or employee, nor shall he assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which he is an employee or legislator.

(e) No employee shall assist any person or business or act in a representative capacity before a State or county agency for a fee or other consideration on any bill, contract, claim, or other transaction or proposal involving official action by the agency if he has official authority over that State or county agency unless he has complied with the disclosure requirements of Section 84-17.

Section 84-15 Contracts. (a) A state agency shall not enter into any contract with a legislator or an employee or with a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract is made after public notice and competitive bidding.

(b) A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.

(c) This section shall not apply to a personal contract of employment with the State.

Section 84-16 Contracts voidable. In addition to any other penalty provided by law, any contract entered into by the State in violation of this chapter is voidable on behalf of the State; provided that in any action to avoid a contract pursuant to this section the interests of third parties who may be damaged thereby shall be taken into account, and the action to void the transaction is initiated within sixty days after the determination of a violation under this chapter. The attorney general shall have the authority to enforce this provision.

Section 84-17 Requirements of disclosure. (a) Every employee shall within 30 days of the commencement of public employment or term of public office, file a disclosure of his financial interests which may be affected by the state agency of which he is an employee or by a state agency which may exercise official action over such interest. The disclosure shall state the nature and extent of such interest; provided that the extent of such interest may be stated in terms of number of shares, percentage or value. Not later than April 30 of each year, the employee shall notify the Ethics Commission of any deletion, addition, transfer or termination of any financial intent.

(b) Every legislator shall within 30 days of the commencement of public office file a disclosure of financial interests, relationships or transactions, including the nature and extent of such interest, relationship or transaction, which may be affected by a state agency, provided that the extent of such interest may be stated in terms of number of shares, percentage or value. Not later than April 30 of each year the legislator shall notify the Ethics Commission of any deletion, addition, transfer or termination of any financial interest.

(c) The information on the disclosures shall be confidential, and the commission shall not release the contents of the disclosures except as may be permitted pursuant to this chapter. The employee shall file his disclosure with the Ethics Commission. The legislator shall file his disclosure with the Presiding Officer of the legislative House of which he is a member pursuant to the rules of that House, provided that a copy of such disclosure shall be filed with the Ethics Commission. The disclosure filed with the Presiding Officer will be made reasonably available for examination by the public under procedures provided by the rules of each House.

(d) Except for legislators, or employees removable only by impeachment, the filing of disclosures pursuant to this section shall be a condition of entering upon and continuing in public employment.

(e) With respect to legislators or employees removable only by impeachment, the failure to file a disclosure pursuant to this section shall be deemed to be a violation of this chapter.

Sec. 84-18 Restrictions on post employment. (a) No former legislator or employee shall disclose any information which by law or practice is not available to the public and which he acquired in the course of his official duties or use the information for his personal gain or the benefit of anyone.

(b) No former legislator or employee shall, within twelve months after termination of his employment, assist any person or business or act in a representative capacity for a fee or other consideration, on matters in which he participated as an employee.

(c) No former legislator or employee shall, within twelve months after termination of his employment, assist any person or business or act in a representative capacity for a fee or other consideration, on matters involving official action by the particular state agency or subdivision thereof with which he had actually served.

(d) This section shall not prohibit any agency from contracting with a former legislator or employee to act on a matter on behalf of the State within the period of limitations stated herein, and shall not prevent such

legislator or employee from appearing before any agency in relation to such employment.

Section 84-19 Violation. (a) Any favorable State action obtained in violation of any of the standards for legislators or employees and former employees is voidable in the same manner as voidable contracts as provided for under section 84-16; and the State by the attorney general may pursue all legal and equitable remedies available to it.

(b) The State by the attorney general may recover any fee, compensation, gift or profit received by any person as a result of a violation of these standards by a legislator or employee or former legislator or employee. Action to recover under this subsection (b) shall be brought within two years of such violation under this chapter.

PART III. STATE ETHICS COMMISSION.

Section 84-21 State ethics commission established; composition. There shall be within the office of the legislative auditor for administrative purposes only a commission to be known as the state ethics commission. The commission shall consist of five members to be appointed by the governor from a panel of ten persons who shall be nominated by the judicial council. Each member shall be a citizen of the United States and a resident of the State. Members of the commission shall hold no other public office.

The chairman of the commission shall be elected by the majority of the commission. The term of each member shall be four years, provided that of the five members initially appointed two members shall hold office for two years, two members shall hold office for three years and one member shall hold office for four years. No person shall be appointed consecutively to more than two terms as a member of the commission. Vacancies shall be filled for the remainder of any unexpired term in the same manner as original appointments except that the judicial council shall nominate for gubernatorial appointment two persons for any vacancy. The governor may remove or suspend any member of the commission, upon the filing of a written finding with the commission, and upon service of a copy of the written finding on the member removed or suspended.

PART IV. ADMINISTRATION AND ENFORCEMENT.

Section 84-31 Duties of commission: complaint, hearing, determination.

- (a) The ethics commission shall have the following powers and duties:
- (1) It shall prescribe a form for the disclosures required by section 84-18 and shall establish an orderly procedure for implementing the requirements of that section.
 - (2) It shall render advisory opinions upon the request of any legislator or employee or former legislator or employee as to whether the facts and circumstances of a particular case constitute or will constitute a

violation of the standards. If no advisory opinion is rendered within thirty days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the standards. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the legislator or employee or former legislator or employee who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the legislator or employee or former legislator or employee in the request for an advisory opinion.

- (3) It shall initiate, receive and constitute charges concerning alleged violation of this chapter, initiate or make investigation, and hold hearings.
- (4) It may subpoena witnesses, administer oaths, and take testimony relating to matters before the commission and require the production for examination of any books or papers relative to any matter under investigation or in question before the commission. Before the commission shall exercise any of the powers authorized herein with respect to any investigation or hearings it shall be formal resolution, supported by a vote of three or more members of the commission, define the nature and scope of its inquiry.
- (5) It may, from time to time make, amend, and repeal such rules and regulations, not inconsistent with this chapter as in the judgment of the commission seem appropriate for the carrying out of this chapter and for the efficient administration thereof, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission. The rules and regulations, when adopted as provided in chapter 91, shall have the force and effect of law.
- (6) It shall have jurisdiction for purposes of investigation and taking appropriate action on alleged violations of this chapter in all proceedings commenced within one year after termination of State employment by a legislator or employee. Nothing herein shall bar proceedings against a person who by fraud or other device, prevents discovery of a violation of this chapter. A proceeding shall be deemed commenced by the signing of a charge by three or more members of the commission.
- (7) It shall distribute its publications without cost to the public and shall initiate and maintain programs with the purpose of educating the citizenry and all legislators and employees on matters of ethics in government employment.
 - (b) Charges concerning the legislator or employee or former legislator or employee must be in writing, signed by the person making the charge under oath, except that any charge initiated by the commission must be signed by three or more members of the commission. The commission shall notify in

writing every legislator or employee or former legislator or employee against whom a charge is received and afforded him an opportunity to explain the conduct alleged to be in violation of the chapter. The commission may investigate, after compliance with this section, such charges and render an informal advisory opinion to the alleged violator. The commission shall investigate all charges on a confidential basis, having available all the powers herein provided, and proceedings at this stage shall not be public. If the informal advisory opinion indicates a probable violation, the legislator or employee or former legislator or employee shall request a formal opinion or within a reasonable time comply with the informal advisory opinion. If the legislator or employee or former legislator or employee fails to comply with such informal advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter might have occurred, a copy of the charge and a further statement of the alleged violation shall be personally served upon the alleged violator. He shall have twenty days after service thereof to respond in writing to the charge and statement.

(c) Any commission member or individual, including the individual making the charge, who divulges information concerning the charge prior to the issuance of the complaint by the commission, or if the investigation discloses that the complaint should not be issued by the commission, at any time divulges any information concerning the original charge, or divulges the contents or disclosures except as permitted by this chapter, shall be guilty of a felony which shall be punishable by a fine of not more than \$5,000 or imprisonment of not more than five years, or both, or in the case of a legislator, when acting in his legislative capacity, be subject to discipline pursuant to article III, section 13, of the Hawaii Constitution as the case may be.

(d) If after twenty days following personal service, a majority of the members of the commission conclude that there is reason to believe that a violation of this chapter has been committed, then the commission shall set a time and place for a hearing, giving notice to the complainant and the alleged violator. All parties shall have an opportunity (1) to be heard, (2) to subpoena witnesses and require the production of any books or papers relative to the proceedings, (3) to be represented by counsel, and (4) to have the right of cross-examination. All hearings shall be in accordance with chapter 91. All witnesses shall testify under oath and the hearings shall be closed to the public unless the party complained against requests an open hearing. The commission shall not be bound by the strict rules of evidence but the commission's findings must be based upon competent and substantial evidence. All testimony and other evidence taken at the hearing shall be recorded. Copies of transcripts of such record shall be available only to the complainant and the alleged violator at their own expense, and the fees therefor shall be deposited in the State's general fund.

(e) A decision of the commission pertaining to the conduct of any legislator or employee shall be in writing and signed by three or more of the members of the commission.

(f) 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.

Sec. 84-32 Procedure. (a) With respect to legislators and employees removable only by impeachment: when the ethics commission after due hearings pursuant to section 31 (d) determines that there is sufficient cause to file a complaint against a legislator or an employee removable only by impeachment, it shall issue a complaint and refer the matter to the appropriate body of the legislature. The complaint must contain a statement of the facts alleged to constitute the violation. If within thirty days after the referral, the legislature has not disposed of the complaint, the commission shall make the charges public. Days during which the legislature is not in session shall not be included in determining the thirty-day period.

(b) With respect to employees other than legislators and employees removable only by impeachment: when the commission after due hearing determines pursuant to section 31 (d) that there is sufficient cause to file a complaint against an employee other than a legislator, or an employee removable only by impeachment, it shall refer the decision to the governor who shall take appropriate action within sixty days and shall notify the commission of the action taken.

If it is found that a violation has occurred, the governor or the ethics commission by a vote of four members may make the findings and the record of the proceeding public, taking into account the seriousness of the violation.

This subsection shall not prevent the commission from reporting decisions in the yearly summaries required by section 84-31 (f).

(c) With respect to former employees: the commission may with the consent of four commissioners issue a public statement of its findings and conclusions, and the attorney general may exercise whatever legal or equitable remedies which may be available to the State.

Section 84-33 Disciplinary action for violation. In addition to any other powers of the civil service commission or other authority may have to discipline employees, the civil service commission or authority may reprimand, put on probation, demote, suspend, or discharge an employee found to have violated the standards of this chapter.

Section 84-34 No compensation. The members of the ethics commission shall serve without compensation but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

Section 84-35 Staff. The ethics commission may employ and at pleasure remove such persons as it may deem necessary for the performance of its functions and fix their compensation within the amounts made available by appropriation therefor. The employees of the commission shall be exempt from chapters 76 and 77.

Section 84-36 Cooperation. The ethics commission may request and shall receive from every department, division, board, bureau, commission,

or other agency of the State cooperation and assistance in the performance of its duties.

Section 84-37. Concurrent Jurisdiction. Notwithstanding any provision contained herein, pursuant to Article III, Section 13 of the Constitution of the State of Hawaii each house of the legislature may prescribe further rules of conduct covering its members and may investigate and discipline a member for any violation of this chapter or its rules.

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material and the underscoring.*

SECTION 3. This Act shall take effect upon its approval, provided that section 84-18 shall apply only to employees who terminate their services on or after the effective date of this Act.

(Approved June 1, 1972.)

*Edited accordingly.