

ACT 245

S.B. NO. 1820-78

A Bill for an Act Relating to Standards of Conduct, Including Disclosure of Financial Interests by Legislators and State Employees.

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

SECTION 1. Section 84-3, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 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 and judges.

(5) "Employment" means any rendering of services for compensation.

(6) "Financial interest" means an interest held by an individual, his or her spouse, or dependent 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.

(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."

SECTION 2. Section 84-14, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 84-14 Conflicts of interest. (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.

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

A person whose position on a board, commission, or committee is mandated by statute, resolution, or executive order to have particular qualifications shall only be prohibited from taking official action that directly and specifically affects a business or undertaking in which he has a substantial financial interest;

provided that the substantial financial interest is related to the member's particular qualifications.

(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 3. Section 84-15, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 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 has been awarded through an open, public process. A state agency may, however, enter into such contract without resort to a competitive bidding process when, in the judgment of the agency, the property or services should not, in the public interest, be acquired through competitive bidding; provided that written justification for the non-competitive award of such contract shall be made a matter of public record and shall be filed with the state ethics commission at least ten days before such contract is entered into.

With respect to members of boards, commissions, and committees, this subsection shall apply only to contracts entered into between a business in which a member has a controlling interest and a state agency which has jurisdiction over the board, commission, or committee to which he is appointed.

(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."

SECTION 4. Section 84-17, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 84-17 Requirements of disclosure. (a) For the purposes of this section, the term "disclosure period" refers to the period from January 1 of the

preceding calendar year to the time of the filing of the employee's or legislator's disclosure of financial interests.

(b) The disclosure of financial interests required by this section shall be filed between January 1 and April 30 of each year or within thirty days of one's election or appointment to a state position enumerated in subsection (c).

(c) The following persons shall file annually with the state ethics commission a disclosure of financial interests:

- (1) The governor, the lieutenant governor, and the members of the legislature.
- (2) The directors and their deputies, the division chiefs, the executive directors and the executive secretaries and their deputies, the purchasing agents and the fiscal officers, regardless of the titles by which the foregoing persons are designated, of every state agency and department.
- (3) The permanent employees of the legislature and its service agencies, other than persons employed in clerical, secretarial, or similar positions.
- (4) The administration director of the State, and the assistants in the office of the governor and the lieutenant governor, other than persons employed in clerical, secretarial, or similar positions.
- (5) The hearings officers of every state agency and department.
- (6) The president, the vice presidents, the chancellors, and the provosts of the University of Hawaii and its community colleges.
- (7) The superintendent, the deputy superintendent, the assistant superintendents, and the district superintendents of the department of education.
- (8) The members of every state board or commission whose original terms of office are for periods exceeding one year and whose functions are not solely advisory.

(d) The financial disclosure statements of the following persons shall be public records and available for inspection as specified in section 92-51:

- (1) The governor, the lieutenant governor, and the members of the legislature.
- (2) The directors of the state departments and their first and second deputies.
- (3) The administrative director of the State.
- (4) The president, the vice presidents and the chancellors of the University of Hawaii.
- (5) The superintendent and the deputy superintendent of the department of education.

(e) The information on the financial disclosure statements shall be confidential, except as provided in section 84-17 (d). The commission shall not release the contents of the disclosures except as may be permitted pursuant to this chapter. Any person who releases any confidential information shall be subject to section 84-31 (c).

(f) The disclosure of financial interest shall state, in addition to the finan-

cial interests of the person disclosing, the financial interests of the person's spouse and dependent children, and shall include:

- (1) The source and amount of all income of \$1,000 or more received, for services rendered, by the person in his own name or by any other person for his use or benefit during the preceding calendar year and the nature of the services rendered; provided that information that may be privileged by law or individual items of compensation that constitute a portion of the gross income of the business or profession from which the person derives income need not be disclosed.
- (2) The amount and identity of every ownership or beneficial interest held during the disclosure period in any business incorporated, regulated, or licensed to carry on business in the State having a value of \$5,000 or more or equal to ten per cent of the ownership of the business and, if the interest was transferred during the disclosure period, the date of the transfer; provided that an interest in the form of an account in a federal or state regulated financial institution, an interest in the form of a policy in a mutual insurance company, or individual items in a mutual fund or a blind trust, if the mutual fund or blind trust has been disclosed pursuant to this paragraph, need not be disclosed.
- (3) Every officership, directorship, trusteeship, or other fiduciary relationship held in a business during the disclosure period, the term of office and the annual compensation.
- (4) The name of each creditor to whom the value of \$3,000 or more was owed during the disclosure period and the original amount and amount outstanding; provided that debts arising out of retail installment transactions for the purchase of consumer goods need not be disclosed.
- (5) The tax map key number and street address, if any, and the value of any real property in the State in which the person holds an interest whose value is \$10,000 or more, and, if the interest was transferred or obtained during the disclosure period, a statement of the amount and nature of the consideration received or paid in exchange for such interest, and the name of the person furnishing or receiving the consideration.
- (6) The names of clients personally represented before state agencies, except in ministerial matters, for a fee or compensation during the disclosure period and the names of the state agencies involved.
- (7) The amount and identity of every creditor interest in an insolvent business held during the disclosure period having a value of \$5,000 or more.

(g) Where an amount is required to be reported, the person disclosing the same shall report the amount as exactly as is practicable. An amount of stock shall be reported by number of shares and by estimated market value on the date reported.

(h) The state ethics commission shall provide a short form of disclosure for subsequent annual filings in those instances where the financial interests of the person disclosing are substantially the same as those reported for the preceding disclosure period.

(i) Failure of a legislator or employee to file a disclosure of financial interests as required by this section shall be a violation of this chapter.”

SECTION 5. Chapter 84, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**Sec. 84- List of persons examining records.** The State ethics commission shall establish and maintain a list of all persons who examine the financial disclosure statements of any person enumerated in section 84-17 (g).† Such list shall specify the name of the person examining the record, the name of the person whose record was examined and the date of examination. Such list shall be confidential; provided that the commission shall notify the person whose financial disclosure statement was examined of the name of the person who examined the financial disclosure statement. The State ethics commission may adopt rules pursuant to chapter 91 to implement this section.”

SECTION 6. **Severability clause.** If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. Statutory 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, or the underscoring.*

SECTION 8. This Act shall take effect upon its approval.

(Approved June 20, 1978.)

†Probably should read “84-17 (d)”.

*Edited accordingly.