

**ACT 91**

**S.B. NO. 42**

**A Bill for an Act Relating to Code of Ethics (Constitutional Amendment of Article XIV).**

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

**SECTION 1. Purpose.** The purpose of this Act is to implement Article XIV of

the Hawaii Constitution pertaining to a Code of Ethics as amended by the Hawaii Constitutional Convention of 1978 and ratified by the voters on November 7, 1978.

SECTION 2. The Preamble of chapter 84, Hawaii Revised Statutes, is amended to read as follows:

**“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; (2) educate the citizenry with respect to ethics in government; and (3) establish an ethics commission which will administer the codes of ethics adopted by the constitutional convention and by the legislature and render advisory opinions and enforce the provisions of this law so that public confidence in public servants will be preserved.”

SECTION 3. Section 84-2, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 84-2 Applicability.** This chapter shall apply to every nominated, appointed, or elected officer, employee, and candidate to elected office of the State and for election to the constitutional convention, but excluding justices and judges; provided however, that in the case of elected delegates and employees of the constitutional convention, this chapter shall apply only to the enforcement and administration of the code of ethics adopted by the constitutional convention.”

SECTION 4. Subsection (4) of section 84-3, Hawaii Revised Statutes, is amended to read as follows:

“(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 or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices and judges.”

SECTION 5. The title to part II of chapter 84, Hawaii Revised Statutes is amended to read as follows:

**“PART II. CODE OF ETHICS”**

SECTION 6. 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); provided that candidates for state elective offices or the constitutional convention shall file the required statements no later than twenty days prior to the date of the primary election for state

offices or the election of delegates to the constitutional convention.

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

- (1) The governor, the lieutenant governor, the members of the legislature, and delegates to the constitutional convention; provided that delegates to the constitutional convention shall only be required to file initial disclosures.
- (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 administrative 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.
- (9) Candidates for state elective offices, including candidates for election to the constitutional convention, provided that candidates shall only be required to file initial disclosures.

(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, the members of the legislature, candidates for and delegates to the constitutional convention, the members of the board of education, and candidates for state elective offices.
- (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 subsection (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) Candidates for state elective offices, including candidates for election to the constitutional convention, shall only be required to disclose their own financial interests. The disclosures of financial interests of all other persons designated in section 84-17(c) shall state, in addition to the financial interests of the person disclosing, the financial interests of the person's spouse and dependent children. All disclosures 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, a delegate to the constitutional convention or employee to file a disclosure of financial interests as required by this section shall be a violation of this chapter.
  - (j) The chief election officer, upon receipt of the nomination paper of any person seeking a state elective office, including the office of delegate to the constitu-

tional convention, shall notify the ethics commission of the name of the candidate for state office and the date on which the person filed the nomination paper. The ethics commission, upon the expiration of the time allowed for filing, shall release to the public a list of all candidates who have failed to file financial disclosure statements.”

SECTION 7. Section 84-19, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 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.

(c) Any violation of this chapter by an employee, candidate for election to and elected delegate to the constitutional convention shall be punishable only in accordance with the code of ethics adopted by the constitutional convention.”

SECTION 8. Section 84-31, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 84-31 Duties of commission; complaint, hearing, determination.** (a) The ethics commission shall have the following powers and duties:

- (1) It shall prescribe forms for the disclosures required by Article XIV of the Hawaii Constitution and section 84-17 and shall establish orderly procedures for implementing the requirements of those provisions.
- (2) It shall render advisory opinions upon the request of any legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment 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, employee, or delegate to the constitutional convention, or person formerly holding such office or employment who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by such persons in the request for an advisory opinion.
- (3) It shall initiate, receive, and consider 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 by 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, delegates to the constitutional convention, and employees on matters of ethics in government employment.
- (8) It shall administer any code of ethics adopted by a state constitutional convention, subject to the procedural requirements of this part and any rules adopted thereunder.
- (9) It shall perform the duties and fulfill the functions assigned to it by chapter 97, relating to registration of lobbyists.

(b) Charges concerning the violation of this chapter shall be in writing, signed by the person making the charge under oath, except that any charge initiated by the commission shall be signed by three or more members of the commission. The commission shall notify in writing every person against whom a charge is received and afford 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 person charged shall request a formal opinion or within a reasonable time comply with the informal advisory opinion. If the person charged 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 of the 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 or of the code of ethics adopted by the constitutional convention 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, delegate to the constitutional convention, or employee or person formerly holding such office or employment 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."

SECTION 9. Section 84-32, Hawaii Revised Statutes, is amended to read as follows:

**"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 84-31(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 84-31(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

†So in original. Probably should read "12".

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.

(d) With respect to delegates to the constitutional convention removable only by impeachment: when the ethics commission after due hearing pursuant to section 84-31(d) determines that there is sufficient cause to file a complaint against a delegate to the constitutional convention, it shall issue a complaint and refer the matter to the appropriate body of the constitutional convention."

SECTION 10. Part IV of Chapter 84, Hawaii Revised Statutes, is amended by the addition of a new section to be appropriately designated and to read as follows:

**"Sec. 84- Prohibition from political activity.** The members of the ethics commission and its staff shall not take an active part in political management or in political campaigns during the term of office or employment."

SECTION 11. Section 97-3, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 97-3 Contributions and expenditures; statement.** (a) A lobbyist shall file a certified statement with the state ethics commission if he:

- (1) Expends \$100 or more in any calendar quarter for lobbying; or
- (2) Receives compensation or reimbursement for lobbying; or
- (3) Engages in lobbying activities as part of his regular employment whether or not he is directly compensated for such activities.

(b) The statement shall be filed with the state ethics commission on June 30 and December 31 of each year and shall contain the following information:

- (1) The name and address of each person with respect to whom expenditures for the purpose of lobbying in the total sum of \$25 or more per day was made by the lobbyist during the statement period and the amount or value of such expenditure;
- (2) The name and address of each person with respect to whom expenditures for the purpose of lobbying in the aggregate of \$150 or more was made by the lobbyist during the statement period and the amount or value of such expenditures;
- (3) The total sum or value of all expenditures for the purpose of lobbying made by the lobbyist during the statement period in excess of \$300 during the statement period;
- (4) The name and address of each person making contributions to the lobbyist for the purpose of lobbying in the total sum of \$25 or more during the statement period and the amount or value of such contributions; and



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(5) The subject area of the legislative and administrative action which was supported or opposed by the lobbyist during the statement period.

(c) The receipt or expenditure of any money for the purpose of influencing the election or defeat of any candidate for an elective office or for the passage or defeat of any proposed measure at any special or general election is excluded from the reporting requirement of this section.”

SECTION 12. Section 97-4, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 97-4 Manner of filing; public records.** All statements required by this chapter to be filed with the state ethics commission:

- (1) Shall be deemed properly filed when delivered or deposited in an established post office within the prescribed time, duly stamped, registered, or certified, and directed to the state ethics commission; provided in the event it is not received, a duplicate of the statement shall be promptly filed upon notice by the state ethics commission of its nonreceipt; and
- (2) Shall be preserved by the state ethics commission for a period of four years from the date of filing; and shall constitute part of the public records of the state ethics commission and shall be open to public inspection.”

SECTION 13. Section 97-6, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 97-6 Administration.** It shall be the duty and responsibility of the state ethics commission:

- (1) On the verified complaint of any person, to investigate or cause to be investigated the activities of any lobbyist to determine whether the lobbyist is in compliance with this chapter; and
- (2) To refer for prosecution any violation of section 97-3.”

SECTION 14. All records, files, supplies, contracts, papers, documents, and other personal property heretofore made, used, held, or acquired by the office of the legislative auditor solely for the purpose of the lobbyist registration function which is transferred to the state ethics commission are transferred with that function.

SECTION 15. Statutory material to be repealed is bracketed. New material is underscored. \*

SECTION 16. This Act shall take effect upon its approval.

(Approved May 19, 1979.)

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\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.