

## ACT 264

S.B. NO. 242

A Bill for an Act Relating to Lobbyists.

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

SECTION 1. Section 97-6, Hawaii Revised Statutes, is amended to read as follows:

**“§97-6 Administration.** (a) The state ethics commission shall administer and implement this chapter, and shall have the following powers and duties:

- (1) [On the verified complaint of any person, to] Initiate, receive, and consider complaints concerning alleged violations of this chapter, and investigate or cause to be investigated on a confidential basis, the activities of any person to determine whether the person is in compliance with this chapter;
- (2) Refer for prosecution any violation of section 97-2, 97-3, or 97-5;
- (3) Prescribe forms for the statements and reports required by sections 97-2 and 97-3 and establish orderly procedures for implementing the requirements of those provisions;

- (4) Render advisory opinions upon the request of any person subject to this chapter. 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 this chapter. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person subject to this chapter who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by [such] the person in the request for an advisory opinion;
- (5) Issue subpoenas, administer oaths, and exercise those powers conferred upon the commission by section 92-16; and
- (6) [From time to time, adopt, amend, and repeal] Adopt such rules, 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, when adopted as provided in chapter 91, shall have the force and effect of law.

(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 the person 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. Service shall be made by personal service upon the alleged violator wherever found or by registered or certified mail with request for a return receipt and marked deliver to addressee only. If after due diligence service cannot be effected successfully in accordance with the above, service may be made by publication if so ordered by the circuit court of the circuit wherein the alleged violator last resided. The commission shall submit to the circuit court for its consideration in issuing its order to allow service by publication an affidavit setting forth facts based upon the personal knowledge of the affiant concerning the methods, means, and attempts made to locate and effect service by personal service or by registered or certified mail in accordance with the above. Service by publication when ordered by the court shall be made by publication once a week for four successive weeks of a notice in a newspaper of general circulation in the circuit of the alleged violator's last known state address. The alleged violator shall have twenty days after service thereof to respond in writing to the charge and statement.

(c) If after twenty days following service of the charge and further statement of alleged violation in accordance with this section, a majority of the members of the commission conclude that there is probable cause 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 in the same manner as provided in subsection (b). Upon the commission's issuance of a notice of hearing, the charge and further statement of alleged violation and the alleged violator's written response thereto shall become public records. The hearing shall be held within ninety days of the commission's issuance of a notice of hearing. If the hearing is not held within that ninety-day period, the charge and further statement of alleged violation shall be dismissed; provided that any delay that is at the request of, or caused by, the alleged violator shall not be counted against the ninety-day period. All parties shall have an opportunity to:

- (1) Be heard;
- (2) Subpoena witnesses and require the production of any books or papers relative to the proceedings;
- (3) Be represented by counsel; and
- (4) 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 open to the public. 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 general fund.

(d) A decision of the commission pertaining to the conduct of any person subject to this chapter shall be in writing and signed by three or more of the members of the commission. A decision of the commission rendered after a hearing together with findings and the record of the proceeding shall be a public record.

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

(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 where the identity of such persons is not otherwise a matter of public record under this chapter."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 21, 1997.)