

A Bill for an Act Relating to Elections.

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

SECTION 1. Section 11-191, Hawaii Revised Statutes, is amended to read as follows:

1. By adding a new definition to be appropriately inserted and to read as follows:

““Ballot issue committee” means a committee as defined in this section which has the exclusive purpose of making or accepting contributions or expenditures for or against any issue appearing on the ballot at the next applicable election.”

2. By amending the definition of “committee” to read as follows:

““Committee” means:

(1) Any organization, association, or individual that accepts or makes a contribution or makes an expenditure for or against any:

(A) Candidate;

(B) Individual who files for nomination at a later date and becomes a candidate; or

(C) Party;

with or without the authorization of the candidate, individual, or party. In addition, the term “committee” means any organization, association, or individual who accepts or makes a contribution or makes an expenditure for or against any question or issue appearing on the ballot at the next applicable election; or

(2) Any organization, association, or individual that raises or holds money or anything of value for a political purpose, with or without the consent or knowledge of any:

(A) Candidate;

(B) Individual who files for nomination at a later date and becomes a candidate; or

(C) Party; and

subsequently contributes money or anything of value to, or makes expenditures on behalf of, the candidate, individual, or party.<sup>1</sup>

[(3)] Notwithstanding any of the foregoing, the term “committee” shall not include any individual making a contribution or expenditure of the individual’s own funds or anything of value that the individual originally acquired for the individual’s own use and not for the purpose of evading any provision of this subpart[; or

(4) Any committee as defined in paragraph (1) that accepts or makes contributions or makes expenditures in aggregate of more than \$1,000 in an election to influence the nomination and election of individuals to public office or the outcome of ballot questions or issues, shall register with the commission and file reports as required by this chapter.], or any organization, which raises or expends funds for the sole purpose of the production and dissemination of informational or educational advertising.”

SECTION 2. Section 11-193, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The duties of the commission under this subpart are:

(1) To develop and adopt reporting forms required by this subpart;

- (2) To adopt and publish a manual for all candidates and committees, describing the requirements of this subpart, including uniform and simple methods of recordkeeping;
- (3) To preserve all reports required by this subpart for at least ten years from the date of receipt;
- (4) To permit the inspection, copying, or duplicating of any report required by this subpart pursuant to rules adopted by the commission; provided that no information or copies from the reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose;
- (5) To ascertain whether any candidate, committee, or party has failed to file a report required by this subpart or has filed a substantially defective or deficient report, and to notify these persons by first class mail that their failure to file or filing of a substantially defective or deficient report must be corrected and explained. The correction or explanation shall be submitted in writing to the commission not later than 4:30 p.m. on the fifth day after notification of the failure to file or deficiency has been mailed to these persons. The commission shall publish in the newspaper, and on its website, the names of all candidates, committees, and parties who have failed to file a report or to correct their deficiency within the time allowed by the commission. Failure to file or correct a report when due, as required by this subpart, shall result in a penalty of \$50. Failure to respond after a newspaper notification or website publication shall result in an additional penalty of \$50 for each day a report remains overdue or uncorrected. All penalties collected under this section shall be deposited in the Hawaii election campaign fund;
- (6) To hold public hearings;
- (7) To investigate and hold hearings for receiving evidence of any violations;
- (8) To adopt a code of fair campaign practices as a part of its rules;
- (9) To establish rules pursuant to chapter 91;
- (10) To request the initiation of prosecution for the violation of this subpart pursuant to section 11-229;
- (11) To administer and monitor the distribution of public funds under this subpart;
- (12) To suggest accounting methods for candidates, parties, and committees, as the commission may deem advisable, in connection with reports and records required by this subpart;
- (13) To employ or contract, without regard to chapters 76 and 77 and section 28-8.3, and, at pleasure, to dismiss persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation;
- (14) To do random audits, field investigations, as necessary;
- (15) To file for injunctive relief when indicated;
- (16) To censure any candidate who fails to comply with the code of fair campaign practices; and
- (17) To render advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the campaign spending laws. If no advisory opinion is rendered within ninety days after all information necessary to issue an opinion has been obtained, 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 campaign spending laws. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the candidate, candidate committee, noncandidate committee, or other person or entity 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 the persons in the request for an advisory opinion.”

SECTION 3. Section 11-194, Hawaii Revised Statutes, is amended to read as follows:

**“§11-194 Registration.** (a) Each candidate, committee, or party shall file an organizational report as set forth in section 11-196, or section 11-196.5 as applicable, within ten days from the date a candidate or candidate committee receives any contributions or makes any expenditures, the aggregate amount of which is more than \$100, or, within ten days from the date a noncandidate committee receives any contributions or makes any expenditures, the aggregate amount of which is more than \$1,000.

(b) Committees that form within ten days of an election and expend in the aggregate more than \$1,000 shall register and fully disclose the expenditure by 4:30 p.m. on the last calendar day prior to the expenditure.

(c) Each candidate who [is certified to be a candidate by the] files nomination papers for office with the chief election officer or county clerk [by way of the “write-in” ballot] shall file an organizational report within five days of [being certified as a candidate.] filing.

[(d) Each candidate shall re-register for the new election period. A noncandidate committee need not re-register for a new election period, but shall affirm the accuracy of the information on the organizational report as set forth in section 11-196.5.]”

SECTION 4. Section 11-195, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All reports required to be filed under this subpart by a candidate or those committees directly associated with the candidate’s candidacy shall be certified by the candidate[.] and treasurer. Reports required to be filed under this subpart by a party or committee that supports more than one candidate shall be certified by a person authorized to sign the reports. All reports required to be filed under this subpart shall be open for public inspection in the office of the commission.”

SECTION 5. Section 11-199, Hawaii Revised Statutes, is amended to read as follows:

**“§11-199 Campaign contributions, generally.** (a) All monetary contributions shall be promptly deposited in a depository institution, as defined by section 412:1-109, duly authorized to do business in the State, such as a bank, savings bank, savings and loan association, depository financial services loan company, credit union, intra-Pacific bank, or similar financial institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, or the national credit union administration in the name of the candidate, committee, or party, whichever is applicable.

(b) Each candidate, committee, or party shall establish and maintain an itemized record showing [the]:<sup>2</sup>

(1) The amount of each monetary contribution[, the];

- (2) The description and value of each nonmonetary contribution[.]; and [the]
- (3) The name and address of each donor making a contribution of more than \$25 in value.

[(c) Each candidate and campaign treasurer shall report the amount and date of deposit of each contribution and the name and address of each donor who makes a contribution whose aggregate value is more than \$100.

(d)] (c) No candidate, committee, or party shall accept a contribution of more than \$100 in cash from a single person without issuing a receipt to the donor and keeping a record of the transaction.

[(e)] (d) Each committee and party shall disclose the original source of all earmarked funds, the ultimate recipient of the earmarked funds, and the fact that the funds are earmarked.”

SECTION 6. Section 11-204, Hawaii Revised Statutes, is amended to read as follows:

**“§11-204 Campaign contributions; limits as to persons.** (a) No person, other than a candidate for the candidate’s own campaign, or any other entity shall make contributions to:

- (1) A candidate seeking nomination or election to a two-year office or to the candidate’s committee in an aggregate amount greater than \$2,000 during an election period; [and]
- (2) A candidate seeking nomination or election to a four-year statewide office or to the candidate’s committee in an aggregate amount greater than \$6,000 during an election period; and
- (3) A candidate seeking nomination or election to a four-year nonstatewide office or to the candidate’s committee in an aggregate amount greater than \$4,000 during an election period.

These limits shall not apply to a loan made to a candidate by a financial institution in the ordinary course of business.

(b) No person or any other entity shall make contributions to a noncandidate committee, in an aggregate amount greater than \$1,000 in an election; except that in the case of a corporation or company using funds from its own treasury, there shall be no limit on contributions or expenditures to the corporation or company noncandidate committee.

(c) A [candidate] candidate’s immediate family, in making [a contribution] contributions to the candidate’s campaign, shall be exempt from the above limitation, but shall be limited in the aggregate to \$50,000 in any election period. The aggregate amount of \$50,000 shall include any loans made for campaign purposes to the candidate from the candidate’s immediate family.

(d) A contribution by a dependent minor shall be reported in the name of the minor but shall be counted against the contribution of the minor’s parent or guardian.

(e) Any candidate [or], candidate’s committee, or committee [who] that receives in the aggregate more than the applicable limits set forth in this section in any primary, initial special, special, or general election from a person, shall be required to transfer an amount equal to any excess over the limits established in this section to the Hawaii election campaign fund within thirty days of receipt [by a candidate or candidate’s committee,] of the contribution, and in any event, no later than thirty days upon the receipt by a candidate, [or] candidate’s committee, or committee, of notification from the commission. A candidate [or], candidate’s committee, or committee who complies with this subsection prior to the initiation of prosecution shall not be subject to any penalty under section 11-228.

(f) All payments made by a person whose contributions or expenditure activity is financed, maintained, or controlled by any corporation, labor organization, association, political party, or any other person or committee, including any parent, subsidiary, branch, division, department, or local unit of the corporation, labor organization, association, political party, or any other person, or by any group of those persons shall be considered to be made by a single person.

(g) A contribution made by two or more corporations shall be treated as one person when such corporations:

- (1) Share the majority of members of their boards of directors;
- (2) Share two or more corporate officers;
- (3) Are owned or controlled by the same majority shareholder or shareholders; or
- (4) Are in a parent-subsidiary relationship.

(h) An individual and any general partnership in which the individual is a partner, or an individual and any corporation in which the individual owns a controlling interest, shall be treated as one person.

(i) No committee which supports or opposes a candidate for public office shall have as officers individuals who serve as officers on any other committee which supports or opposes the same candidate. No such committee shall act in concert with, or solicit or make contributions on behalf of, any other committee.

(j) [No contributions may be made to a noncandidate committee from a corporation or other organization unless the noncandidate committee has been in existence continuously, as shown on the records of the campaign spending commission, for at least twelve months prior to the next primary election.

(k) [No contributions or expenditures shall be made to or on behalf of a candidate or committee by a foreign national or foreign corporation, including a domestic subsidiary of a foreign corporation, a domestic corporation that is owned by a foreign national, or a local subsidiary where administrative control is retained by the foreign corporation, and in the same manner prohibited under 2 United States Code section 441e and 11 Code of Federal Regulations 110.4(a) and 110.9(a), as amended. No foreign-owned domestic corporation shall make contributions where:

- (1) Foreign national individuals participate in election-related activities such as decisions concerning the making of contributions or the administration of a political committee; or
- (2) The contribution funds are not domestically-derived.

[(1)] (k) No person or any other entity shall make contributions to a political party in an aggregate amount greater than \$50,000 in any two-year election period.

(l) Except for subsection (j), this section shall not apply to ballot issue committees.”

SECTION 7. Section 11-212, Hawaii Revised Statutes, is amended to read as follows:

**“§11-212 Preliminary reports.** (a) [Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a candidate committee.] The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report with the commission or appropriate county clerk’s office[.]. Preliminary reports shall be filed on forms provided by the commission no later than 4:30 p.m. on the [twenty-fifth and tenth] following dates:

- (1) July thirtieth of the year of the primary election;
- (2) Ten calendar [day] days prior to each primary and initial special election[.]; and [the tenth]
- (3) Ten calendar [day] days prior to a special or general election.

Each report shall be certified pursuant to section 11-195 and shall contain the following information which shall be current through the thirtieth calendar day prior to the filing of the report filed on the thirtieth of July and fifth calendar day prior to the filing of [a] other preliminary [report:] reports:

- (1) The aggregate sum of all contributions and other campaign receipts received;
- (2) The amount and date of deposit of the contribution and the name and address of each donor who contributes an aggregate of more than \$100 during an election period, which has not previously been reported;
- (3) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$1,000 or more during an election period, which has not previously been reported;
- (4) All expenditures made, incurred, or authorized by or for a candidate, including the name and address of each payee and the amount, date, and purpose of each expenditure; and
- (5) A current statement of the balance on hand or deficit.

(b) Each noncandidate committee shall file a preliminary report with the commission, on forms provided by the commission, no later than 4:30 p.m. on the tenth calendar day prior to each primary election and the tenth calendar day prior to a special or general election. Each report shall be certified pursuant to section 11-195 and shall contain the following information, which shall be current through the fifth calendar day prior to the filing of a preliminary report:

- (1) The aggregate sum of all contributions and other campaign receipts received;
- (2) The amount and date of deposit of the contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$100 or more during an election period, which has not previously been reported;
- (3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;
- (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
- (5) A current statement of the balance on hand.

(c) A candidate, party, or committee whose aggregate contributions [or] and aggregate expenditures for the reporting period each total \$2,000 or less may file a short form report with the commission or appropriate county clerk's office in lieu of the reports required by this section and section 11-213.

(d) Notwithstanding this section and section 11-213, a candidate, party, or committee whose aggregate contributions [or] and aggregate expenditures for the election period total \$1,000 or less, need not file a preliminary and final primary report, a preliminary and final general report, or a special election report, but shall file only a final election period report."

SECTION 8. Section 11-213, Hawaii Revised Statutes, is amended to read as follows:

**"§11-213 Final and supplemental reports.** (a) Primary and initial special election. Each candidate whether or not successful in a primary or initial special election, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall file a final primary report certified pursuant to section 11-195 with the commission on forms provided by the commission no later than 4:30 p.m.

on the twentieth calendar day after a primary or initial special election. The report shall include the following information which shall be current through the day of the primary election:

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each contribution and the name and address of each donor who contributes an aggregate of more than \$100 during an election period, which has not previously been reported;
- (3) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$1,000 or more during an election period, which has not previously been reported;
- (4) A statement of all expenditures made, incurred, or authorized by or for a candidate including the name and address of each payee and the amount, date, and purpose of each expenditure; and
- (5) The cash balance and a statement of surplus or deficit.

(b) Each noncandidate committee shall file a final primary report, certified pursuant to section 11-195, with the commission on forms provided by the commission no later than 4:30 p.m. on the twentieth calendar day after a primary election. The report shall include the following information, which shall be current through the day of the primary election:

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of more than \$100 during an election, which has not previously been reported;
- (3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;
- (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
- (5) A current statement of the balance on hand.

(c) General, special general, special election or election period. Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall file a final election period general report with the commission on forms provided by the commission no later than 4:30 p.m. on the thirtieth calendar day after a general, special general, or special election. The final election period report shall be certified pursuant to section 11-195, shall report all items prescribed in subsection (a) or (b) for noncandidate committees, and shall be current through the day of the general election. A candidate who is unsuccessful in a primary or special primary election shall file a final election period report.

(d) Termination. A candidate, party, or committee may terminate registration with the commission with no surplus or no deficit. A termination report approved by the commission shall include information on the disposition of any funds, which has not previously been reported.

(e) Deficit. In the event of a deficit the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall, every six months until the deficit is eliminated, file supplemental reports covering all items prescribed in subsection (a) or subsection (b) in the case of noncandidate committees. The first report shall be due no later than 4:30 p.m. on the thirtieth day after the last day of the election year.

(f) Surplus. In the event of a surplus the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall:

- (1) Maintain the cash surplus in a financial depository; and

- (2) Every six months, until the candidate files to be on the ballot with the state office of elections, or in the case of a party or committee until they participate in an election again, file supplemental reports detailing all items prescribed in subsection (a) or in the case of a noncandidate committee until they participate in an election again, or file supplemental reports detailing all items prescribed in subsection (b).

The first report shall be due not later than 4:30 p.m. on the thirtieth calendar day after the last day of the election year.

[(g) Short form reporting. A candidate, party, or committee who receives no contributions, makes no expenditures, and has a deficit or surplus of \$2,000 or less in any prescribed reporting period shall nevertheless file preliminary, final, and supplemental reports on the respective dates pursuant to this subpart. The reports may be filed on a short form as provided by the commission.

(h)] (g) All supplemental reports required by this section shall be filed until a candidate files to be on the ballot with the state elections office. Each party or noncandidate committee shall file a supplemental report for the respective reporting period during a nonelection year. In an election year, each party and noncandidate committee shall file reports as prescribed in this section and section 11-212 for the primary and general election.”

SECTION 9. Section 11-215, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) [To the extent authorized by law, all] All advertisements [authorized by a candidate or a candidate’s committee] shall contain the name and address of the candidate, committee, [or] party, or person paying for the advertisement. If an advertisement is not authorized by a candidate or a candidate’s committee, the advertisement shall contain the name and address of the person paying for the advertisement.

(b) In addition to subsection (a), [and to the extent authorized by law,] no [person] candidate or committee shall cause or submit any advertisement in support of a candidate [or], against a candidate’s opponent, or with regard to a ballot issue to be published, broadcast, televised, or otherwise circulated and distributed except under the following conditions:

- (1) The advertisement shall contain a notice in a prominent location that the literature or advertisement is published, broadcast, televised, or circulated with the approval and authority of the candidate, provided that in the event that the literature or advertisement is paid for by a candidate [or], committee directly associated with a candidate, or ballot issue committee, the notice of approval and authority need not be included; or
- (2) The advertisement shall contain a notice in a prominent location that the literature or advertisement is published, broadcast, televised, or circulated without the approval and authority of the candidate.”

SECTION 10. Section 11-228, Hawaii Revised Statutes, is amended to read as follows:

“**§11-228 Administrative fines; relief.** (a) In the performance of its required duties, the commission may render a decision or issue an order affecting any person violating any provision of this subpart [other than in sections 11-193(a)(5) and 11-215,] that shall provide for the assessment of an administrative fine in the manner prescribed as follows:



- (1) If a natural person, an amount not to exceed \$1,000 for each occurrence or an amount equivalent to three times the amount of an unlawful contribution or expenditure, whichever is greater; or
- (2) If a corporation, organization, association, or labor union, it shall be punished by a fine not exceeding \$1,000 for each occurrence; and
- (3) Whenever a corporation, organization, association, or labor union violates this subpart, the violation shall be deemed to be also that of the individual directors, officers, or agents of the corporation, organization, association, or labor union, who have knowingly authorized, ordered, or done any of the acts constituting the violation.

(b) Any order for the assessment of an administrative fine may not be issued against a person without providing the person written notice and an opportunity to be heard at a hearing conducted under chapter 91. A person may waive these rights by written stipulation or consent. If an administrative fine is imposed upon a candidate, the commission may order that the fine, or any portion, be paid from the candidate's personal funds.

(c) If an order issued by the commission is not complied with by the person to whom it is directed, the first circuit court, upon application of the commission, shall issue an order requiring the person to comply with the commission's order. Failure to obey such a court order shall be punished as contempt.

(d) Any administrative fine collected by the commission shall be deposited in the Hawaii election campaign fund.

(e) Any person or the commission may sue for injunctive relief to compel compliance with this subpart.

(f) The provisions of this section shall not be construed to prohibit prosecution under any appropriate provision of the Hawaii Penal Code or section 11-229.

(g) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by sections 11-193(a)(5) and 11-215(b)(3)."

SECTION 11. Section 11-229, Hawaii Revised Statutes, is amended to read as follows:

**"§11-229 Criminal prosecution.** (a) Any [individual] person who knowingly, intentionally, or recklessly violates any provision of this subpart[, other than sections 11-193(a)(5) and 11-215,] shall be guilty of a misdemeanor. A person who is convicted under this section shall be disqualified from holding elective public office for a period of four years from the date of conviction.

(b) For purposes of prosecution for violation of this subpart, the offices of the attorney general and the prosecuting attorney of the respective counties shall be deemed to have concurrent jurisdiction to be exercised as follows:

- (1) Prosecution shall commence with a written request from the commission or upon the issuance of an order of the court; provided that prosecution may commence prior to any proceeding initiated by the commission or final determination;
- (2) In the case of state offices, parties, or issues, the attorney general or the prosecuting attorney for the city and county of Honolulu shall prosecute any violation; and
- (3) In the case of all other offices, parties, or issues, the attorney general or the prosecuting attorney for the respective county shall prosecute any violation.

In the commission's choice of prosecuting agency, it shall be guided by whether there will be any conflicting interest between the agency and its appointive authority.

(c) The court shall give priority to the expeditious processing of suits under this section.

(d) Prosecution for violation of any provision of this subpart shall not be commenced after five years have elapsed from the date of the violation or date of filing of the report covering the period in which the violation occurred, whichever is later.

(e) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by sections 11-193(a)(5) and 11-215(b)(3)."

SECTION 12. Act 27, Special Session Laws of Hawaii 1995, as amended by Act 13, Session Laws of Hawaii 1996, is amended by amending section 15 to read as follows:

"SECTION 15. This Act shall take effect on July 1, 1995[;] provided that on June 30, 1999, this Act shall be repealed and sections 11-1, 11-2, 11-5, [11-191, 11-194, 11-195, 11-216,] 12-8, and 26-1, Hawaii Revised Statutes,<sup>2</sup> shall be reenacted in the form in which they read on the day before the effective date of this Act."

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 14. This Act shall take effect on June 29, 1999.

(Approved June 24, 1999.)

#### Notes

1. Prior to amendment ",'" appeared here.
2. Colon should be underscored.
3. Comma should not be underscored.