

ACT 13

S.B. NO. 289

A Bill for an Act Relating to Ethics Administrative Fines.

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

SECTION 1. The legislature finds that it is in the public interest to have an efficient and timely resolution of ethics and lobbying cases. Timely resolution of matters before the ethics commission promotes the fair adjudication of rights and public transparency. This Act aims to provide greater uniformity, flexibility, and efficiency in assessing administrative fines related to violations of the state ethics code and lobbyist law.

SECTION 2. Section 84-17, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

~~“(1) If notice and order of an administrative fine has been issued pursuant to this section, the order shall become final on the twentieth day after it is served upon the alleged violator, unless the alleged violator submits a written request for a hearing before the state ethics commission on or before the twentieth day. After conducting a hearing pursuant to chapter 91, the state ethics commission may affirm, modify, or rescind the order as appropriate. The state ethics commission may file with the circuit court of the first circuit any order the commission has issued pursuant to this section for the purpose of confirming the order as a final judgment that shall have the same force and effect and shall be enforceable and collectable as other judgments issued by the circuit courts;~~

~~provided that there shall be no appeal from the judgment.] Administrative fines assessed pursuant to this section may be enforced using the procedure provided in section 84-31(g)."~~

SECTION 3. Section 84-31, Hawaii Revised Statutes, is amended to read as follows:

"§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 the gifts disclosure statements required by section 84-11.5 and shall establish orderly procedures for implementing the requirements of those provisions;
- (2) It shall provide advice upon the request of any person as to whether the facts and circumstances of a particular situation constitute or will constitute a violation of the code of ethics or other laws or rules administered and enforced by the commission, and discuss ways to avoid an appearance of impropriety. A person receiving advice from the commission may request a written summary of that advice. The commission shall treat all advice requests, responses, and related materials as confidential. Written summaries shall be confidential unless the recipient waives confidentiality;
- (3) 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 code of ethics. If no advisory opinion is rendered within ninety 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 code of ethics. 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. The commission shall also render public general advisory opinions concerning proper interpretation of the code of ethics and other laws or rules administered and enforced by the commission, if it deems the opinion of sufficient general interest and importance;
- (4) It may initiate an investigation into alleged, possible, or potential violations of this chapter and other laws or rules administered and enforced by the commission, on a confidential basis, having available all of the powers herein provided, whether the investigation is made based on a charge allegation, other information or indications, or as the commission determines is in the public interest;
- (5) It shall initiate, receive, and consider charges and other information, on a confidential basis, concerning alleged, possible, or potential violations of this chapter and other laws or rules administered and enforced by the commission, initiate or make investigation, and hold hearings;
- (6) Upon adoption of a resolution defining the scope and nature of the inquiry, supported by a vote of three or more members of the

commission, 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;

- (7) It may, from time to time adopt, amend, and repeal any rules, not inconsistent with this chapter, that 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;
- (8) It shall have jurisdiction for purposes of investigation and taking appropriate action on possible violations of this chapter in all proceedings commenced within six years of a possible violation of this chapter by a legislator or employee or former legislator or employee. A proceeding shall be deemed commenced by the filing of a charge with the commission or by the signing of a charge by three or more members of the commission. Nothing herein shall bar proceedings against a person who by fraud or other device, prevents discovery of a violation of this chapter;
- (9) 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, employees, and delegates to the constitutional convention on matters of ethics in government employment; and
- (10) 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.

(b) Charges concerning the violation of this chapter shall be in writing, signed by the person making the charge under oath; provided that any charge initiated by the commission shall be signed by three or more members of the commission. The commission shall issue written notice to 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, the 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 the 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 a 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 state ethics 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. 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.

(d) 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. 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 upon the written request of the person charged 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. 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.

(g) Notwithstanding the above procedures, for any violation of this chapter with a proposed administrative penalty of less than \$1,000, the state ethics commission may issue a notice and order of administrative fine describ-

ing the violation and assessing an administrative fine. The order shall become final on the twentieth day after it is served upon the alleged violator, unless the alleged violator submits a written request for a hearing before the state ethics commission on or before the twentieth day. After conducting a hearing pursuant to chapter 91, the state ethics commission may affirm, modify, or rescind the order as appropriate. The state ethics commission may file with the circuit court of the first circuit any order the commission has issued pursuant to this section for the purpose of confirming the order as a final judgment that shall have the same force and effect and shall be enforceable and collectable as other judgments issued by the circuit courts; provided that there shall be no appeal from the judgment.”

SECTION 4. Section 84-39, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No fine shall be assessed under this section unless:

- (1) The state ethics commission convenes a hearing in accordance with section 84-31(c) and chapter 91 and a decision has been rendered by the commission; [Ø]
- (2) The state ethics commission and respondent agree to resolve any charge of an alleged violation prior to completion of the contested case process and the resolution includes payment of an administrative fine or restitution, or both[-]; or
- (3) The state ethics commission issues a notice and order of administrative fine pursuant to section 84-31(g).”

SECTION 5. 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) Initiate, receive, and consider charges and other information, on a confidential basis, concerning alleged, possible, or potential violations of this chapter and other laws or rules administered and enforced by the commission, 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) Prescribe forms for the documentation, statements, and reports required by sections 97-2 and 97-3 and establish orderly procedures for implementing the requirements of those provisions;
- (3) Provide advice upon the request of any person as to whether the facts and circumstances of a particular situation constitute or will constitute a violation of this chapter or other laws or rules administered and enforced by the commission and discuss ways to avoid an appearance of impropriety. A person receiving advice from the commission may request a written summary of that advice. The commission shall treat all advice requests, responses, and related materials as confidential. Written summaries shall be confidential unless the recipient waives confidentiality;
- (4) Render advisory opinions upon the request of any person subject to this chapter. If no advisory opinion is rendered within ninety 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 the person in the request for an advisory opinion. The commission shall also render public general advisory opinions concerning proper interpretations of the laws of this chapter and other laws or rules administered and enforced by the commission, if it deems the opinion of sufficient general interest and importance;

- (5) Issue subpoenas, administer oaths, require the production for examination of any records or papers relative to any matter under investigation or in question before the commission, and exercise those powers conferred upon the commission by section 92-16;
- (6) Adopt, amend, and repeal rules, not inconsistent with this chapter, that in the judgment of the commission seem appropriate for the carrying out of this chapter and for the efficient administration of this chapter, including every matter or thing required to be done or that 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;
- (7) Have jurisdiction for purposes of investigation and taking appropriate action on possible violations of this chapter in all proceedings commenced within six years of a possible violation of this chapter. A proceeding shall be deemed commenced by the filing of a charge with the commission or by the signing of a charge by three or more members of the commission. Nothing shall bar proceedings against a person who by fraud or other device prevents discovery of a violation of this chapter; and
- (8) Distribute educational and advisory publications and initiate, administer, and maintain training programs for the purpose of training lobbyists on compliance with state lobbying laws and applicable parts of the code of ethics.

(b) Charges concerning the violation of this chapter shall be in writing, signed by the person making the charge under oath; provided that any charge initiated by the commission shall be signed by three or more members of the commission. The commission shall issue written notice to 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, the 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 the 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 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 shall be based on competent and substantial evidence.

All testimony and other evidence taken at the hearing shall be recorded. All fees collected under this chapter shall be deposited into 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 does not issue a decision or final conclusion in which the commission concludes that a person has violated this chapter, the commission shall, upon the written request of the person charged, 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 iden-

tivity 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.

(g) Notwithstanding the above procedures, for any violation of this chapter with a proposed administrative penalty of less than \$1,000, the state ethics commission may issue a notice and order of administrative fine describing the violation and assessing an administrative fine. The order shall become final on the twentieth day after it is served upon the alleged violator, unless the alleged violator submits a written request for a hearing before the state ethics commission on or before the twentieth day. After conducting a hearing pursuant to chapter 91, the state ethics commission may affirm, modify, or rescind the order as appropriate. The state ethics commission may file with the circuit court of the first circuit any order the commission has issued pursuant to this section for the purpose of confirming the order as a final judgment that shall have the same force and effect and shall be enforceable and collectable as other judgments issued by the circuit courts; provided that there shall be no appeal from the judgment.”

SECTION 6. Section 97-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No fine shall be assessed unless the state ethics commission:

- (1) Convenes a hearing in accordance with section 97-6(c) and chapter 91 and renders a decision; [øø]
- (2) Together with the alleged violator, agrees to resolve any alleged violation before the completion of the contested case process; provided that the resolution includes payment of an administrative fine or restitution, or both[-]; or
- (3) Issues a notice and order of administrative fine pursuant to section 97-6(g).”

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. 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 that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved April 10, 2025.)