

Hawaii State Legislature  
State House of Representatives  
Committee on Judiciary

State Representative Karl Rhoads, Chair  
State Representative Joy A. San Buenaventura, Vice Chair  
Committee on Judiciary

Thursday, January 21, 2016, 2:00 p.m. Room 325  
House Bill 182 Relating to Violations of the Lobbyist Law

Honorable Chair Karl Rhoads, Vice Chair Joy A. San Buenaventura and  
members of the House Committee on Judiciary,

My name is Russel Yamashita and I am a legislative representative for a professional trade organization. I appreciate the opportunity to testify in opposition to of House Bill 182 Relating to Violations of the Lobbyist Law. The proposed amendment to the law imposes a strict liability standard for any mistake in filing any reports under this statute. Not even the Internal Revenue Service takes such a draconian and heavy handed position as this bill does for mere reporting violations that have no fiscal or legal impact on government.

The elimination of the word “willfulness” creates a strict liability standard for any mistake made in filing any reports or forms under this statute. Even though this is “only” a civil violation, one would think that the standard for imposing such a repressive and harsh would be for violations of significant harm to society, such as the EPA imposes for clean water violations which have the potential to provide a clear and present danger to the public.

This legislation appears to be a “feel good” type of legislation designed to give its proponents the appearance of “doing something” to better society in general and accomplishes nothing in reality. In other words, it is like banning aerial fireworks in 1962, the law seems to be working just fine, is it not?

Therefore, I respectfully request that this bill be held in it’s current form



# HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

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HOUSE COMMITTEE ON JUDICIARY  
The Honorable Karl Rhoads, Chair  
The Honorable Joy A. San Buenaventura, Vice Chair

## **H.B. No. 182, Relating to Violations of the Lobbyists Law**

Hearing: Thursday, January 21, 2016, 2:00 p.m.

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The Hawaii State Ethics Commission **strongly supports** H.B. No. 182, Relating to Violations of the Lobbyists Law, which amends the penalties section of the Lobbyist Law, HRS sections 97-7(a)(1) and (a)(2), by removing the word “wilfully.”

In its current form, the statute requires the Commission to establish that lobbyists or organizations involved in lobbying acted “**wilfully**” to assess an administrative fine against them for: (1) failing to file a required lobbying statement or report; or (2) filing a statement or report containing false information or a material omission of any fact.

The requirement that a lobbyist’s or organization’s conduct be “wilful” is a relic of an older version of the Lobbyists Law. As originally enacted, the Lobbyists Law imposed criminal sanctions for violations, i.e., a violation of chapter 97 was a criminal misdemeanor. As with all criminal sanctions, the statute required proof that the act for which the person was charged was committed with a certain state of mind or mens rea. In this case, the term “wilful” refers to the requisite state of mind that was required to be proven before the criminal penalty could be imposed for violation of the Lobbyist Law.

In 2001, the Lobbyists Law was decriminalized; however, in what appears to have been a simple oversight, the word “wilfully” was not removed from the law.

In its current form, a person is subject only to an administrative fine for violation of the Lobbyists Law. Accordingly, the Commission suggests that it is unnecessary and inconsistent with the statute’s purpose to limit the penalty provisions, HRS sections 97-7(a)(1) and (a)(2), to only those situations where a person acts “wilfully.”

To illustrate the absurdity of the state of mind requirement: a person could spend thousands of dollars on lobbying activities, all of which must be reported, not file any expenditure or other lobbyist report, and possibly avoid an administrative penalty simply because the person professed ignorance of his legal reporting requirements. And, that same person could continue not reporting the thousands of dollars spent on lobbying activities each year as long as he maintained his ignorance of the Lobbyists Law. That situation is inconsistent with the statutory purpose and renders the Commission virtually

toothless to enforce the reporting requirements of the Lobbyists Law.

The Commission strongly urges the Committee to amend the statute to be consistent with its current administrative enforcement structure by removing the word “wilfully” from HRS sections 97-7(a)(1) and (a)(2).

Thank you for considering of the Commission’s testimony.



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## COMMITTEE ON JUDICIARY

THURSDAY, January 21, 2016, 2:00 P.M., Room 325  
HB 182, RELATING TO VIOLATIONS OF THE LOBBYISTS LAW

### TESTIMONY

Janet Mason, Legislative Co-Chair, League of Women Voters of Hawaii

Chair Rhoads, Vice-Chair San Buenaventura and Committee Members:

**The League of Women Voters of Hawaii offers comments on HB182 which removes the “willfulness” requirement from violations by lobbyists relating to the failure to file statements or filing false statements under our Ethics Code.**

Our check on the National Conference of State Legislatures website indicates that twenty states including Hawaii have prohibitions against false reporting or disclosure by lobbyists. However, it does appear that all these states had a “willfulness” or intentionality standard for violations.

We note there is already much training and online information available for Hawaii lobbyists concerning their reporting and disclosure duties, and most lobbyists are not political neophytes.

It is true that the “willfulness” requirement makes it difficult for our Ethics Commission to enforce our Ethics Code. As written the law requires that the Commission assess the filer’s state of mind when they made the filing. We would like to hear more from the Ethics Commission about whether they have found this practical and possible.

Thank you for the opportunity to submit testimony.



House Judiciary Committee  
Chair Karl Rhoads, Vice Chair Joy San Buenaventura

Thursday 01/21/2016 at 2:00 PM in Room 325  
HB182 Relating to the Violations of the Lobbyists Law

TESTIMONY — SUPPORT  
Carmille Lim, Executive Director, Common Cause Hawaii

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Dear Chair Rhoads, Vice Chair San Buenaventura, and members of the House Judiciary Committee:

**Common Cause Hawaii** asks that the Committee pass HB182 which would remove the "wilfulness" requirement from violations relating to lobbyists' failure to file statements or the filing of false statements.

Determining one's intentions and "wilfulness" to file, not file, or misfile statements is challenging. Removing "wilfulness" from this section of the ethics code would provide clarity for lobbyists and those enforcing the ethics code.

Thank you for the opportunity to offer testimony supporting HB182.