
A BILL FOR AN ACT

RELATING TO CAMPAIGN FINANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that while people have a
2 right to know the identities of those who are attempting to
3 influence elections, it is often difficult or even impossible to
4 trace the true source of money that is behind election
5 advertisements. Transparency is a key factor for a healthy and
6 strong democracy, as it enables voters to have accurate
7 information to evaluate candidates for public office and hold
8 them accountable if elected. Unfortunately, existing law does
9 not prevent the deception currently practiced by some people and
10 corporations that transfer their money to other entities and
11 hide their true identities when purchasing campaign
12 advertisements.

13 The purpose of this Act is to require any person who acts
14 as a conduit of at least \$10,000 in certain campaign-related
15 activities within any two-year election period to maintain
16 records and file reports with the campaign spending commission



1 regarding large contributions received and disclose the sources
2 of the contributions.

3 SECTION 2. Chapter 11, Hawaii Revised Statutes, is amended
4 by adding a new subpart to part XIII to be appropriately
5 designated and to read as follows:

6 " . Disclosures of Independent Campaign Spending

7 **§11-A Definitions.** As used in this subpart, unless the
8 context requires otherwise:

9 "Business income" means:

10 (1) Funds received by a person in commercial transactions
11 in the ordinary course of the person's regular trade,
12 business, or investments; or

13 (2) Membership or union dues to the extent that they do
14 not exceed \$5,000 from any person in a calendar year.

15 "Covered person" means any person who spends at least
16 \$10,000 in any two-year election period on independent campaign
17 spending, or that accepts at least \$10,000 in any two-year
18 election period in in-kind contributions to enable independent
19 campaign spending. "Covered person" does not include:

20 (1) Any individual who spends only the individual's own
21 personal funds for independent campaign spending;



1 (2) Any person who spends only the person's own business
2 income for independent campaign spending; and

3 (3) Any candidate, candidate committee, or noncandidate
4 committee that receives no more than \$6,000 in
5 contributions from any one person in an election
6 period.

7 "General treasury" means any funds that are not traceable
8 funds.

9 "Identity" means:

10 (1) In the case of an individual, the name, mailing
11 address, occupation, and employer of the individual;
12 or

13 (2) In the case of a person other than an individual, the
14 full name; address; federal tax status; and state in
15 which the person is registered as a partnership,
16 incorporated, or organized as a limited liability
17 company, if applicable.

18 "Independent campaign spending" means any disbursement of
19 funds to finance the following, without any express or implied
20 agreement with, or any general or particular understanding with,



1 or pursuant to any request by or communication with a candidate
2 or candidate committee:

3 (1) Any public communication that:

4 (A) Expressly advocates for or against the nomination
5 or election of a candidate;

6 (B) Promotes, supports, attacks, or opposes a
7 candidate, regardless of whether the
8 communication expressly advocates for the
9 election or defeat of the candidate;

10 (C) Refers to a clearly identified candidate at any
11 time beginning one hundred twenty days before a
12 primary or an initial special election through
13 the general or special election, and is
14 disseminated in the jurisdiction where the
15 candidate's election is taking place, regardless
16 of whether the communication expressly advocates
17 for the election or defeat of the candidate; or

18 (D) Promotes, supports, attacks, or opposes the
19 placement of, or approval of, a ballot question,
20 an initiative, or a measure before the voters of
21 any local jurisdiction, regardless of whether the



1 communication expressly advocates for or against
2 the placement or approval;

3 (2) Partisan voter activity, partisan voter registration,
4 partisan get-out-the-vote activity, or other partisan
5 campaign-related activity; or

6 (3) Research, design, production, polling, data analytics,
7 mailing or social media list acquisition, or other
8 actions or activities conducted in preparation for or
9 conjunction with activities described in paragraph
10 (1) (A) or (B).

11 "Independent campaign spending" does not include any
12 disbursement of funds to finance coordinated activity as defined
13 in section 11-363.

14 "Original funds" means the business income of a person or
15 the personal funds of an individual.

16 "Personal funds" means:

17 (1) Any asset over which an individual had legal control
18 and rightful title at the time the individual engaged
19 in independent campaign spending or transferred funds
20 to another person for that spending;

21 (2) Income received by an individual, including:



- 1 (A) Any salary or other earned income from bona fide
- 2 employment;
- 3 (B) Dividends and proceeds from the individual's
- 4 personal investments; and
- 5 (C) Bequests to the individual, including income from
- 6 trusts established by bequests; and
- 7 (3) Of the assets that are jointly owned by the individual
- 8 and the individual's spouse, the portion that is:
 - 9 (A) Equal to the individual's share of the asset
 - 10 under the instrument of conveyance or ownership;
 - 11 or
 - 12 (B) The value of one-half of the property, if no
 - 13 specific share is indicated by an instrument of
 - 14 conveyance or ownership.

15 "Personal funds" does not include any asset or income received
16 from any person for the purpose of influencing any election.

17 "Public communication" means any communication to the
18 general public through broadcast, cable, satellite, the Internet
19 or other digital means, a newspaper, a magazine, an outdoor
20 advertising facility, mass mailing, telephones, or any other



1 form of general public political advertising or marketing,
2 regardless of medium.

3 "Traceable funds" means funds that:

- 4 (1) Have been contributed to a covered person and over
5 which the contributor has not exercised the option
6 under section 11-D to exclude from the use or transfer
7 of funds for independent campaign spending; or
8 (2) Are used to finance in-kind contributions to a covered
9 person to enable independent campaign spending.

10 "Transfer record" means a written record of identity of the
11 persons who directly or indirectly contributed or transferred
12 original funds used for independent campaign spending, the
13 amounts of those contributions or transfers, and how those funds
14 are disbursed.

15 **§11-B Independent campaign spending; entities under a**
16 **person's control.** The amount of a person's independent campaign
17 spending shall include independent campaign spending made by
18 entities established, financed, maintained, or controlled by the
19 person.

20 **§11-C Transfer records.** A covered person shall maintain
21 transfer records.



1 **§11-D Contributors; consent.** Before a covered person may
2 use or transfer a contributor's funds for independent campaign
3 spending, the covered person shall provide the contributor with
4 a written notice that:

5 (1) Informs the contributor that the contributed funds may
6 be used for independent campaign spending within the
7 State and that the covered person may need to report
8 information about the contributor to the commission
9 for disclosure to the public;

10 (2) Informs the contributor that the contributor may
11 exclude the contributed funds from the intended use or
12 transfer for independent campaign spending by
13 providing the covered person with a written request
14 within twenty-one days after the contributor's receipt
15 of the notice; and

16 (3) May be provided to the contributor before, after, or
17 at the same time the covered person receives the
18 contribution; provided that the contributed funds
19 shall not be used or transferred for independent
20 campaign spending until the twenty-second day after
21 the contributor receives the notice or provides



1 written consent for the intended use or transfer,
2 whichever occurs first.

3 **§11-E Major contributors.** (a) Any person who contributes
4 at least \$10,000 in the aggregate in traceable funds in a two-
5 year election period to a covered person shall inform the
6 covered person, within ten days of receiving a written request
7 from the covered person, of the identities of persons who
8 directly or indirectly contributed at least \$1,000 in original
9 funds transferred, the amounts of the persons' original funds
10 transferred, and any persons who have previously transferred the
11 original funds. If more than one transfer has previously
12 occurred, the contributor shall disclose all the previous
13 transfers and intermediaries. The contributor shall maintain
14 these records for at least five years and shall provide them to
15 the commission upon request.

16 (b) Any person who makes an in-kind contribution to a
17 covered person of at least \$10,000 in a two-year election period
18 for the purpose of enabling independent campaign spending shall
19 inform the covered person, at the time the in-kind contribution
20 is made or promised to be made, of the identities of persons who
21 directly or indirectly contributed or provided at least \$1,000



1 in original funds to finance the in-kind contribution, the
2 amounts of funds used from each persons' original funds, and any
3 persons who had previously transferred the original funds. If
4 more than one transfer previously occurred, the in-kind
5 contributor shall disclose all the previous transfers and
6 intermediaries. The in-kind contributor shall maintain these
7 records for at least five years and shall provide them to the
8 commission upon request.

9 **§11-F Disclosure reports.** (a) Within ten days of a
10 covered person's initial disbursement of \$10,000 in the
11 aggregate in funds on independent campaign spending during a
12 two-year election period, or a covered person's acceptance of at
13 least \$10,000 of in-kind contributions in the aggregate to
14 enable independent campaign spending during a two-year election
15 period, the covered person shall electronically file with the
16 commission an initial report that discloses:

- 17 (1) The identity of any person who owns or controls any
18 traceable funds, as applicable;
- 19 (2) The identity of any affiliated person who maintains
20 its own transfer records and that person's
21 relationship to the covered person;



- 1 (3) The name, address, and position of the individual who
2 is the custodian of the transfer records;
- 3 (4) The name, address, and position of at least one
4 individual authorized to directly or indirectly
5 control how the traceable funds are disbursed;
- 6 (5) The total amount of traceable funds owned or
7 controlled by the covered person on the date of the
8 report;
- 9 (6) Each contributor of original funds that has directly
10 or indirectly contributed more than \$1,000 of
11 traceable funds or in-kind contributions during the
12 two-year election period to the covered person, and
13 the date and amount of each of the contributor's
14 contributions;
- 15 (7) The identity of each person who acted as an
16 intermediary and who transferred traceable funds in
17 whole or part from an original source to the covered
18 person, and the date, amount, and original and
19 intermediate sources, of the transferred funds;
- 20 (8) The identity of each person who received from the
21 covered person disbursements of at least \$1,000 in the



1 aggregate of traceable funds during the two-year
2 election period and the date and purpose of each
3 disbursement, including the full name and office
4 sought of any candidate that was supported, opposed,
5 or referenced in a public communication that was
6 financed, in whole or part, with the disbursement; and
7 (9) The identity of any person who was the contributor of
8 the majority of the traceable funds in the covered
9 person's custody at the beginning of the two-year
10 election period.

11 (b) Within ten days after a covered person has disbursed
12 an additional \$10,000 in the aggregate in funds on independent
13 campaign spending during the two-year election period described
14 in subsection (a), or receives an additional \$10,000 of in-kind
15 contributions in the aggregate to enable independent campaign
16 spending during the two-year election period described in
17 subsection (a), the covered person shall electronically file
18 with the commission a subsequent report. Each subsequent report
19 shall disclose what, if any, information has changed from the
20 initial report.



1 (c) If information reported pursuant to subsection (a) has
2 changed but has not yet been reported pursuant to subsection
3 (b), the covered person, within twenty days after the change is
4 made, shall electronically file with the commission a report
5 that includes the updated information; provided that the covered
6 person shall not be required to report any changes that occur
7 more than two years after the filing of the most recent report
8 required by this section.

9 (d) Except as provided in subsection (e), a noncandidate
10 committee that is also a covered person may satisfy the timing
11 requirements for reports required by this section by filing a
12 report required by section 11-336 that also includes the
13 information required by this section.

14 (e) If a noncandidate committee is a covered person who is
15 required to file a report under this section, and the deadline
16 for the filing of the report based on the requirements of
17 subsection (a) or (b) is within fourteen days before an
18 election, the noncandidate committee shall instead file the
19 report within the three days after the applicable aggregate
20 monetary amount as described in subsection (a) or (b) is met.



1 **§11-G Identification of certain top contributors.** (a)

2 Except as otherwise provided by this section, any public
3 communication funded by independent campaign spending by a
4 covered person or created through any in-kind contribution
5 received by a covered person shall include a notice that
6 includes:

7 (1) Any information required by section 11-391; and
8 (2) The words: "The three top contributors who helped pay
9 for this message are", followed by the names of the
10 three top contributors as determined pursuant to
11 subsection (c).

12 (b) If the public communication:

13 (1) Has a visual component, a notice required by this
14 section shall be displayed in clear and conspicuous
15 text;

16 (2) Has an audio component, a notice required by this
17 section shall be stated by an audible voice in a clear
18 and conspicuous manner; or

19 (3) Is disseminated on the Internet or by other digital
20 means:



- 1 (A) As a text or graphic communication, a notice
2 required by this section shall appear:
- 3 (i) In letters that are at least as large as the
4 majority of the text in the communication;
- 5 (ii) In a box to set the notice apart from the
6 other contents of the communication; and
- 7 (iii) In text in a color that has a reasonable
8 degree of contrast with the color of the
9 background behind the text;
- 10 (B) As an audio communication, a notice required by
11 this section shall be spoken in a clearly audible
12 and intelligible voice that is heard over a four-
13 second or longer period at the beginning or end
14 of the communication;
- 15 (C) As a communication that includes both a video and
16 an audio component, a notice required by this
17 section shall be:
- 18 (i) Displayed in a manner that complies with
19 subparagraph (A) and at the same time any
20 notice is spoken pursuant to clause (ii);
21 and



- 1 (ii) Spoken in a manner that complies with
2 subparagraph (B); provided that if the
3 communication is less than ten seconds long,
4 the audio version of the notice may be
5 excluded;
- 6 (D) In a format other than the formats described in
7 subparagraphs (A) to (C), a notice required by
8 this section shall be included in the
9 communication as described in subparagraph (A),
10 (B), or (C) to the extent possible for the
11 format; provided that the notice shall be clear
12 and conspicuous;
- 13 (E) In a manner or format that makes it technically
14 impossible to include the notice described in
15 subsection (a) in the communication, the notice
16 described in subsection (a) may be excluded from
17 the public communication; provided that the
18 communication shall include an alternative notice
19 that shall:
20 (i) State the name of the person who paid for
21 the public communication; and



- 1 (ii) Provide a means for a recipient of the
2 public communication to immediately obtain
3 the information described in subsection (a)
4 with minimal effort and without requiring
5 the recipient to receive or view any
6 additional material, other than the
7 information described in subsection (a); and
- 8 (F) Shall not be in compliance with this section if
9 the required notice would be difficult to read,
10 difficult to hear, or if its placement would
11 likely be overlooked by a recipient of the
12 communication.
- 13 (c) For the purposes of determining the persons who are to
14 be the top three contributors as described in subsection (a)(2):
- 15 (1) The top three contributors shall be determined by
16 calculating the three contributors of traceable funds
17 that have directly or indirectly contributed to the
18 covered person:
- 19 (A) The highest amounts of original funds during the
20 two-year election period; or



1 (B) If the covered person is a noncandidate
2 committee, the highest amounts of original funds
3 to the general treasury of the noncandidate
4 committee;

5 (2) Contributions of traceable funds made in prior two-
6 year election periods shall be considered to have been
7 contributed in the current two-year election period:

8 (A) If the contributor's aggregate contributions of
9 original funds to the covered person constituted
10 the majority of the covered person's traceable
11 funds at the beginning of the two-year election
12 period; or

13 (B) If the reporting person is a noncandidate
14 committee, the contributor's aggregate
15 contributions to the general treasury of the
16 noncandidate committee constituted the majority
17 of the funds in that treasury at the beginning of
18 the two-year election period;

19 (3) If multiple contributors have contributed identical
20 amounts to a covered person so that there is no
21 difference in the amounts contributed by the third-



1 highest contributor and the fourth-highest or lower-
2 level contributor, the contributor that most recently
3 contributed to the covered person shall be deemed a
4 top three contributor;

5 (4) No contributor of traceable funds shall be deemed a
6 top three contributor if the aggregate amount of the
7 contributor's contributions of original funds to the
8 covered person during the two-year election period is
9 less than \$10,000; and

10 (5) To the extent that fewer than three contributors meet
11 the \$10,000 threshold in paragraph (4), an
12 intermediary that directly or indirectly transferred
13 at least \$10,000 in traceable funds to the covered
14 person during the two-year election period shall be
15 treated as the original source of funds.

16 **§11-H Structured transactions; prohibited.** No person
17 shall structure or assist in structuring, or attempt to
18 structure or assist in structuring, any solicitation,
19 contribution, expenditure, disbursement, or other transaction to
20 evade the reporting requirements of this subpart.



1 **§11-I Penalties.** Any person who violates this subpart or
2 any rule adopted by the commission pursuant to this subpart
3 shall pay an administrative fine in an amount no less than the
4 amount contributed or spent in violation of this subpart, nor
5 more than twice the amount contributed or spent in violation of
6 this subpart; provided that if the amount contributed or spent
7 in violation of this subpart was less than \$5,000, the maximum
8 fine shall be \$10,000.

9 **§11-J Rules.** The commission shall adopt rules, pursuant
10 to chapter 91, necessary for the purposes of this subpart."

11 SECTION 3. Section 11-341, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) Each statement of information shall contain the
14 following:

15 (1) The name of the person making the expenditure, name of
16 any person or entity sharing or exercising discretion
17 or control over the person, and the custodian of the
18 books and accounts of the person making the
19 expenditure;

20 (2) The names and titles of the executives or board of
21 directors who authorized the expenditure, if the



- 1 expenditure was made by a noncandidate committee,
2 business entity, or an organization;
- 3 (3) The state of incorporation or formation and principal
4 address of the noncandidate committee, business
5 entity, or organization or for an individual, the
6 name, address, occupation, and employer of the
7 individual making the expenditure;
- 8 (4) The amount of each expenditure during the period
9 covered by the statement and the identification of the
10 person to whom the expenditure was made;
- 11 (5) The elections to which the electioneering
12 communications pertain and the names of any clearly
13 identifiable candidates and whether those candidates
14 are supported or opposed;
- 15 (6) If the expenditures were made by a noncandidate
16 committee, the names and addresses of all persons who
17 contributed to the noncandidate committee for the
18 purpose of publishing or broadcasting the
19 electioneering communications;
- 20 (7) If the expenditures were made by an organization other
21 than a noncandidate committee, the names and addresses



1 of all persons who contributed to the organization for
2 the purpose of publishing or broadcasting the
3 electioneering communications;

4 (8) Whether any electioneering communication is made in
5 coordination, cooperation, or concert with or at the
6 request or suggestion of any candidate, candidate
7 committee, or noncandidate committee, or agent of any
8 candidate if any, and if so, the identification of the
9 candidate, candidate committee, or noncandidate
10 committee, or agent involved; and

11 (9) The three top contributors as required under section
12 [~~11-393,~~ 11-G, if applicable."

13 SECTION 4. Section 11-393, Hawaii Revised Statutes, is
14 repealed.

15 [~~§11-393 Identification of certain top contributors to~~
16 ~~noncandidate committees making only independent expenditures.~~

17 ~~(a) An advertisement shall contain an additional notice in a~~
18 ~~prominent location immediately after or below the notices~~
19 ~~required by section 11-391, if the advertisement is broadcast,~~
20 ~~televised, circulated, or published, including by electronic~~
21 ~~means, and is paid for by a noncandidate committee that~~



1 ~~certifies to the commission that it makes only independent~~
2 ~~expenditures. This additional notice shall start with the~~
3 ~~words, "The three top contributors for this advertisement are",~~
4 ~~followed by the names of the three top contributors, as defined~~
5 ~~in subsection (c), who made the highest aggregate contributions~~
6 ~~to the noncandidate committee for the purpose of funding the~~
7 ~~advertisement; provided that:~~

8 ~~(1) If a noncandidate committee is only able to identify~~
9 ~~two top contributors who made contributions for the~~
10 ~~purpose of funding the advertisement, the additional~~
11 ~~notice shall start with the words, "The two top~~
12 ~~contributors for this advertisement are", followed by~~
13 ~~the names of the two top contributors;~~

14 ~~(2) If a noncandidate committee is able to identify only~~
15 ~~one top contributor who made contributions for the~~
16 ~~purpose of funding the advertisement, the additional~~
17 ~~notice shall start with the words, "The top~~
18 ~~contributor for this advertisement is", followed by~~
19 ~~the name of the top contributor;~~

20 ~~(3) If a noncandidate committee is unable to identify any~~
21 ~~top contributors who made contributions for the~~



1 ~~purpose of funding the advertisement, the additional~~
2 ~~notice shall start with the words, "The three top~~
3 ~~contributors for this noncandidate committee are",~~
4 ~~followed by the names of the three top contributors~~
5 ~~who made the highest aggregate contributions to the~~
6 ~~noncandidate committee; and~~

7 ~~(4) If there are no top contributors to the noncandidate~~
8 ~~committee, the noncandidate committee shall not be~~
9 ~~subject to this section.~~

10 ~~In no case shall a noncandidate committee be required to~~
11 ~~identify more than three top contributors pursuant to this~~
12 ~~section.~~

13 ~~(b) If a noncandidate committee has more than three top~~
14 ~~contributors who contributed in equal amounts, the noncandidate~~
15 ~~committee may select which of the top contributors to identify~~
16 ~~in the advertisement; provided that the top contributors not~~
17 ~~identified in the advertisement did not make a higher aggregate~~
18 ~~contribution than those top contributors who are identified in~~
19 ~~the advertisement. The additional notice required for~~
20 ~~noncandidate committees described under this subsection shall~~
21 ~~start with the words "Three of the top contributors for this~~



1 ~~advertisement are" or "Three of the top contributors to this~~
2 ~~noncandidate committee are", as appropriate, followed by the~~
3 ~~names of the three top contributors.~~

4 ~~(c) This section shall not apply to advertisements~~
5 ~~broadcast by radio or television of such short duration that~~
6 ~~including a list of top contributors in the advertisement would~~
7 ~~constitute a hardship to the noncandidate committee paying for~~
8 ~~the advertisement. A noncandidate committee shall be subject to~~
9 ~~all other requirements under this part regardless of whether a~~
10 ~~hardship exists pursuant to this subsection. The commission~~
11 ~~shall adopt rules pursuant to chapter 91 to establish criteria~~
12 ~~to determine when including a list of top contributors in an~~
13 ~~advertisement of short duration constitutes a hardship to a~~
14 ~~noncandidate committee under this subsection.~~

15 ~~(d) Any noncandidate committee that violates this section~~
16 ~~shall be subject to a fine under section 11-410.~~

17 ~~(e) For purposes of this part, "top contributor" means a~~
18 ~~contributor who has contributed an aggregate amount of \$10,000~~
19 ~~or more to a noncandidate committee within a twelve-month period~~
20 ~~prior to the purchase of an advertisement."]~~



1 SECTION 5. In codifying the new sections added by
2 section 2 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 6. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 7. If any provision of this Act, or the
9 application thereof to any person or circumstance, is held
10 invalid, the invalidity does not affect other provisions or
11 applications of the Act that can be given effect without the
12 invalid provision or application, and to this end the provisions
13 of this Act are severable.

14 SECTION 8. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 9. This Act shall take effect on July 1, 2112;
17 provided that this Act shall apply to all elections beginning
18 with the 2022 primary election.



S.B. NO. 3164
S.D. 1
H.D. 1

Report Title:

Campaign Spending Commission; Independent Campaign Spending; Top Contributors; Disclosure

Description:

Requires certain persons to maintain relevant records and file reports with the campaign spending commission regarding large contributions received and disclose the sources of the contributions. Effective 7/1/2112. (HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

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