
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 while the 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 they need to evaluate candidates for public office
8 and to hold them accountable if elected. Unfortunately,
9 existing law does not prevent the deception currently practiced
10 by some people and corporations that transfer their money to
11 other entities and hide their true identities when purchasing
12 campaign 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 that 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.

20 "Covered person" does not include:



- 1 (1) Any individual who spends only the individual's own
2 personal funds for independent campaign spending;
- 3 (2) Any person that spends only the person's own business
4 income for independent campaign spending; and
- 5 (3) Any candidate, candidate committee, or noncandidate
6 committee that receives no more than \$6,000 in
7 contributions from any one person in an election
8 period.

9 "General treasury" means any funds that are not traceable
10 funds.

11 "Identity" means:

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

20 "Independent campaign spending" means any disbursement of
21 funds to finance the following, without any express or implied



1 agreement with, or any general or particular understanding with,
2 or pursuant to any request by or communication with a candidate
3 or candidate committee:

4 (1) Any public communication that:

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

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

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

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



1 local jurisdiction, regardless of whether the
2 communication expressly advocates for or against
3 the placement or approval;

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

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

11 (1) (A) or (B).

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

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

17 "Personal funds" means:

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



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

2 (A) Any salary or other earned income from bona fide
3 employment;

4 (B) Dividends and proceeds from the individual's
5 personal investments; and

6 (C) Bequests to the individual, including income from
7 trusts established by bequests; and

8 (3) Of the assets that are jointly owned by the individual
9 and the individual's spouse, the portion that is:

10 (A) Equal to the individual's share of the asset
11 under the instrument of conveyance or ownership;
12 or

13 (B) The value of one-half of the property, if no
14 specific share is indicated by an instrument of
15 conveyance or ownership.

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

19 "Public communication" means any communication to the
20 general public through broadcast, cable, satellite, the Internet
21 or other digital means, a newspaper, a magazine, an outdoor



1 advertising facility, mass mailing, telephones, or any other
2 form of general public political advertising or marketing,
3 regardless of medium.

4 "Traceable funds" means funds that:

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

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

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



1 **§11-C Transfer records.** A covered person shall maintain
2 transfer records if the person spends at least \$10,000 in a two-
3 year election period on independent campaign spending, or
4 accepts at least \$10,000 in a two-year election period of in-
5 kind contributions to enable independent campaign spending.

6 **§11-D Contributors; consent.** Before a covered person may
7 use or transfer a contributor's funds for independent campaign
8 spending, the covered person shall provide the contributor with
9 a written notice that:

10 (1) Informs the contributor that the contributed funds may
11 be used for independent campaign spending within the
12 State and that the covered person may need to report
13 information about the contributor to the commission
14 for disclosure to the public;

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



(3) May be provided to the contributor before, after, or at the same time the covered person receives the contribution; provided that the contributed funds shall not be used or transferred for independent campaign spending until the twenty-second day after the contributor receives the notice or provides written consent for the intended use or transfer, whichever occurs first.

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



(b) Any person that makes an in-kind contribution to a covered person of at least \$10,000 in a two-year election period for the purpose of enabling independent campaign spending shall inform the covered person, at the time the in-kind contribution is made or promised to be made, of the identities of persons that directly or indirectly contributed or provided at least \$1,000 in original funds to finance the in-kind contribution, the amounts of funds used from each persons' original funds, and any persons who had previously transferred the original funds. If more than one transfer previously occurred, the in-kind contributor shall disclose all the previous transfers and intermediaries. The in-kind contributor shall maintain these records for at least five years and shall provide them to the commission upon request.

§11-F Disclosure reports. (a) Within ten days of a covered person's initial disbursement of \$10,000 in the aggregate in funds on independent campaign spending during a two-year election period, or a covered person's acceptance of at least \$10,000 of in-kind contributions in the aggregate to enable independent campaign spending during a two-year election



1 period, the covered person shall electronically file with the
2 commission an initial report that discloses:

3 (1) The identity of any person that owns or controls any
4 traceable funds, as applicable;

5 (2) The identity of any affiliated person that maintains
6 its own transfer records and that person's
7 relationship to the covered person;

8 (3) The name, address, and position of the individual who
9 is the custodian of the transfer records;

10 (4) The name, address, and position of at least one
11 individual authorized to directly or indirectly
12 control how the traceable funds are disbursed;

13 (5) The total amount of traceable funds owned or
14 controlled by the covered person on the date of the
15 report;

16 (6) Each contributor of original funds that has directly
17 or indirectly contributed more than \$1,000 of
18 traceable funds or in-kind contributions during the
19 two-year election period to the covered person, and
20 the date and amount of each of the contributor's
21 contributions;



(7) The identity of each person who acted as an intermediary and who transferred traceable funds in whole or part from an original source to the covered person, and the date, amount, and original and intermediate sources, of the transferred funds;

(8) The identity of each person who received from the covered person disbursements of at least \$1,000 in the aggregate of traceable funds during the two-year election period and the date and purpose of each disbursement, including the full name and office sought of any candidate that was supported, opposed, or referenced in a public communication that was financed, in whole or part, with the disbursement; and

(9) The identity of any person who was the contributor of the majority of the traceable funds in the covered person's custody at the beginning of the two-year election period.

(b) Within ten days after a covered person has disbursed an additional \$10,000 in the aggregate in funds on independent campaign spending during the two-year election period described in subsection (a), or receives an additional \$10,000 of in-kind



1 contributions in the aggregate to enable independent campaign
2 spending during the two-year election period described in
3 subsection (a), the covered person shall electronically file
4 with the commission a subsequent report. Each subsequent report
5 shall disclose what, if any, information has changed from the
6 initial report.

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

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

20 (e) If a noncandidate committee is a covered person that
21 is required to file a report under this section, and the



1 deadline for the filing of the report based on the requirements
2 of subsection (a) or (b) is within fourteen days before an
3 election, the noncandidate committee shall instead file the
4 report within the three days after the applicable aggregate
5 monetary amount as described in subsection (a) or (b) is met.

6 **§11-G Identification of certain top contributors.** (a)

7 Except as otherwise provided by this section, any public
8 communication funded by independent campaign spending by a
9 covered person or created through any in-kind contribution
10 received by a covered person shall include a notice that
11 includes:

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

17 (b) If the public communication:

- 18 (1) Has a visual component, a notice required by this
19 section shall be displayed in clear and conspicuous
20 text;



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

4 (3) Is disseminated on the internet or by other digital
5 means:

6 (A) As a text or graphic communication, a notice
7 required by this section shall appear:

8 (i) In letters that are at least as large as the
9 majority of the text in the communication;

10 (ii) In a box to set the notice apart from the
11 other contents of the communication; and

12 (iii) In text in a color that has a reasonable
13 degree of contrast with the color of the
14 background behind the text;

15 (B) As an audio communication, a notice required by
16 this section shall be spoken in a clearly audible
17 and intelligible voice that is heard over a four-
18 second or longer period at the beginning or end
19 of the communication;



1 (C) As a communication that includes both a video and
2 an audio component, a notice required by this
3 section:

4 (i) Shall be displayed in a manner that complies
5 with subparagraph (A) and shall be displayed
6 at the same time any notice is spoken
7 pursuant to clause (ii); and

8 (ii) Shall be spoken in a manner that complies
9 with subparagraph (B); provided that if the
10 communication is less than ten seconds long,
11 the audio version of the notice may be
12 excluded;

13 (D) In a format other than the formats described in
14 subparagraphs (A) to (C), a notice required by
15 this section shall be included in the
16 communication as described in subparagraph (A),
17 (B), or (C) to the extent possible for the
18 format; provided that the notice shall be clear
19 and conspicuous;

20 (E) In a manner or format that makes it technically
21 impossible to include the notice described



1 subsection (a) in the communication, the notice
2 described in subsection (a) may be excluded from
3 the public communication; provided that the
4 communication shall include an alternative notice
5 that shall:

6 (i) State the name of the person that paid for
7 the public communication; and

8 (ii) Provide means for a recipient of the public
9 communication to immediately obtain the
10 information described in subsection (a) with
11 minimal effort and without requiring the
12 recipient to receive or view any additional
13 material, other than the information
14 described in subsection (a); and

15 (F) Shall not be in compliance with this section if
16 the required notice would be difficult to read,
17 difficult to hear, or if its placement would
18 likely be overlooked by a recipient of the
19 communication.

20 (c) For the purposes of determining the persons who are to
21 be top three contributors as described in subsection (a)(2):



(1) The top three contributors shall be determined by calculating the three contributors of traceable funds that have directly or indirectly contributed to the covered person:

(A) The highest amounts of original funds during the two-year election period; or

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

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

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

(B) If the reporting person is a noncandidate committee, the contributor's aggregate contributions to the general treasury of the



1 noncandidate committee constituted the majority
2 of the funds in that treasury at the beginning of
3 the two-year election period;

4 (3) If multiple contributors have contributed identical
5 amounts to a covered person so that there is no
6 difference in the amounts contributed by the third-
7 highest contributor and the fourth-highest or lower-
8 level contributor, the contributor that most recently
9 contributed to the covered person shall be deemed a
10 top three contributor;

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

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



1 **§11-H Structured transactions; prohibited.** No person
2 shall structure or assist in structuring, or attempt to
3 structure or assist in structuring, any solicitation,
4 contribution, expenditure, disbursement, or other transaction to
5 evade the reporting requirements of this subpart.

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

14 **§11-J Rules.** The commission shall adopt rules, pursuant
15 to chapter 91, necessary for the purposes of this subpart."

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

18 "(b) Each statement of information shall contain the
19 following:

20 (1) The name of the person making the expenditure, name of
21 any person or entity sharing or exercising discretion



1 or control over the person, and the custodian of the
2 books and accounts of the person making the
3 expenditure;

4 (2) The names and titles of the executives or board of
5 directors who authorized the expenditure, if the
6 expenditure was made by a noncandidate committee,
7 business entity, or an organization;

8 (3) The state of incorporation or formation and principal
9 address of the noncandidate committee, business
10 entity, or organization or for an individual, the
11 name, address, occupation, and employer of the
12 individual making the expenditure;

13 (4) The amount of each expenditure during the period
14 covered by the statement and the identification of the
15 person to whom the expenditure was made;

16 (5) The elections to which the electioneering
17 communications pertain and the names of any clearly
18 identifiable candidates and whether those candidates
19 are supported or opposed;

20 (6) If the expenditures were made by a noncandidate
21 committee, the names and addresses of all persons who



1 contributed to the noncandidate committee for the
2 purpose of publishing or broadcasting the
3 electioneering communications;

4 (7) If the expenditures were made by an organization other
5 than a noncandidate committee, the names and addresses
6 of all persons who contributed to the organization for
7 the purpose of publishing or broadcasting the
8 electioneering communications;

9 (8) Whether any electioneering communication is made in
10 coordination, cooperation, or concert with or at the
11 request or suggestion of any candidate, candidate
12 committee, or noncandidate committee, or agent of any
13 candidate if any, and if so, the identification of the
14 candidate, candidate committee, or noncandidate
15 committee, or agent involved; and

16 (9) The three top contributors as required under section
17 ~~[11-393,]~~ 11-G, if applicable."

18 SECTION 4. Section 11-393, Hawaii Revised Statutes, is
19 repealed.

20 ~~["[§11-393] Identification of certain top contributors to~~
21 ~~noncandidate committees making only independent expenditures.~~



~~(a) An advertisement shall contain an additional notice in a prominent location immediately after or below the notices required by section 11-391, if the advertisement is broadcast, televised, circulated, or published, including by electronic means, and is paid for by a noncandidate committee that certifies to the commission that it makes only independent expenditures. This additional notice shall start with the words, "The three top contributors for this advertisement are", followed by the names of the three top contributors, as defined in subsection (c), who made the highest aggregate contributions to the noncandidate committee for the purpose of funding the advertisement; provided that:~~

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

~~(2) If a noncandidate committee is able to identify only one top contributor who made contributions for the purpose of funding the advertisement, the additional~~



1 ~~notice shall start with the words, "The top~~
2 ~~contributor for this advertisement is", followed by~~
3 ~~the name of the top contributor;~~

4 ~~(3) If a noncandidate committee is unable to identify any~~
5 ~~top contributors who made contributions for the~~
6 ~~purpose of funding the advertisement, the additional~~
7 ~~notice shall start with the words, "The three top~~
8 ~~contributors for this noncandidate committee are",~~
9 ~~followed by the names of the three top contributors~~
10 ~~who made the highest aggregate contributions to the~~
11 ~~noncandidate committee; and~~

12 ~~(4) If there are no top contributors to the noncandidate~~
13 ~~committee, the noncandidate committee shall not be~~
14 ~~subject to this section.~~

15 ~~In no case shall a noncandidate committee be required to~~
16 ~~identify more than three top contributors pursuant to this~~
17 ~~section.~~

18 ~~(b) If a noncandidate committee has more than three top~~
19 ~~contributors who contributed in equal amounts, the noncandidate~~
20 ~~committee may select which of the top contributors to identify~~
21 ~~in the advertisement; provided that the top contributors not~~



~~identified in the advertisement did not make a higher aggregate contribution than those top contributors who are identified in the advertisement. The additional notice required for nonecandidate committees described under this subsection shall start with the words "Three of the top contributors for this advertisement are" or "Three of the top contributors to this nonecandidate committee are", as appropriate, followed by the names of the three top contributors.~~

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

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



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

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

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

SECTION 7. 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 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.



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

4



Report Title:

Campaign Spending Commission; Independent Campaign Spending;
Transfer Records; Disclosure Reports

Description:

Requires the maintenance of transfer records relating to certain campaign contributions and transfers. Requires certain covered persons to seek permission from contributors to use or transfer contributed funds for independent campaign spending. Requires certain major contributors to disclose and maintain relevant records relating to the identities of other contributors. Requires certain covered persons to file disclosure reports with the campaign spending commission. Facilitates the identification of certain top contributors of funds for certain political advertisements. Prohibits structured transactions. 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.

