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## A BILL FOR AN ACT

RELATING TO PRIMARY ELECTIONS.

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

1           SECTION 1.   In *California Democratic Party v. Jones*, 530  
2 U.S. 567 (2000), the United States Supreme Court ruled that a  
3 political party has a right, guaranteed by the First Amendment  
4 of the United States Constitution, to limit participation in its  
5 primary elections to persons who are members of that political  
6 party. At present, the State of Hawaii lacks statutory  
7 provisions that would enable a political party to exercise this  
8 First Amendment right.

9           SECTION 2.   Chapter 12, Hawaii Revised Statutes, is amended  
10 by adding five new sections to be appropriately designated and  
11 to read as follows:

12           "§12-A Political parties' option to limit participation in  
13 primary election to party members; notification to chief  
14 election officer or county clerk. (a) Subject to the  
15 requirements of subsection (b), a political party that is a  
16 qualified political party pursuant to sections 11-61 through  
17 11-65 may, but need not, limit participation in its primary  
18 elections to members of its own party. The determination, if



1 made, shall be made by the governing body of the political party  
2 pursuant to its governing documents. A political party shall be  
3 the sole judge of whether the determination conforms to the  
4 requirements of its governing documents.

5 (b) A political party that chooses to limit participation  
6 in its primary elections to members of its own party shall  
7 notify the chief election officer as to state and congressional  
8 elections and the county clerk in the case of partisan county  
9 primary elections. The notification shall be in writing signed  
10 by the chairperson of the political party and shall be received  
11 by the chief election officer, or clerk in case of county  
12 offices, not less than ninety days before the scheduled date of  
13 the primary election. A political party may make a  
14 determination as to all of the offices that are subject to the  
15 primary election in a given election cycle, but it may not make  
16 a determination as to fewer than all of the offices. A  
17 political party may withdraw a determination as to future  
18 primary elections, but it may not withdraw a determination as to  
19 a primary election once it has been made. The determination  
20 shall be deemed continuing from one election cycle to the next  
21 unless it is formally withdrawn by the party. The withdrawal



1 shall not take effect for a primary election unless it is made  
2 at least ninety days prior to that primary election.

3       §12-B Submission of lists of party members to chief  
4 election officer or county clerk. A political party that has  
5 made a determination pursuant to section 12-A shall, on or  
6 before the sixtieth day before the affected primary election,  
7 submit to the chief election officer, or clerk in case of county  
8 offices, a list of all registered voters who are enrolled  
9 members of that political party who are in good standing with  
10 the party. The list shall state the name of each voter, the  
11 voter's address, and shall identify the state house district and  
12 precinct in which the voter resides. The membership list shall  
13 provide a space on the line for each member that shall be marked  
14 by a precinct official to indicate that the member has voted.  
15 The list shall be as accurate and up-to-date as the party can  
16 reasonably make it. The party may, but need not, submit to the  
17 chief election officer, or clerk in case of county offices, an  
18 exclusion list of any persons who have been expelled from the  
19 party or have otherwise been disqualified by the party from  
20 participation in party activities. The party shall submit to  
21 the chief election officer, or clerk in case of county offices,



1 an updated list of enrolled members for each succeeding primary  
2 election not less than sixty days before the primary election.

3 §12-C Voter participation in party primary; enrollment at  
4 time of primary election. (a) A party that has designated its  
5 primary election as being limited to its enrolled members shall  
6 provide the chief election officer, or clerk in case of county  
7 offices, with its standard-form party enrollment cards in  
8 sufficient quantity to allow all registered voters who wish to  
9 do so to enroll as party members on primary election day or  
10 simultaneously with early voting.

11 (b) A registered voter whose name is included on the list  
12 of members submitted by the party to the chief election officer,  
13 or clerk in case of county offices, shall be entitled to receive  
14 and cast that party's ballot for the primary election. A  
15 precinct officer shall mark the membership list in the  
16 appropriate space to indicate that the member has taken a ballot  
17 of that political party for the primary election. The voter may  
18 decline to take the ballot and may vote in the primary election  
19 of any other party, if the voter is qualified, or the voter may  
20 vote in the independent primary election.

21 (c) Except for persons who are listed on the exclusion  
22 list of a party, a registered voter whose name is not included



1 on the list of members submitted by the party to the chief  
2 election officer, or clerk in case of county offices, shall be  
3 entitled to receive and cast a ballot for the party's primary  
4 election if the voter completes and signs the standard form  
5 party enrollment card. No party may impose a fee or require a  
6 monetary donation for enrollment.

7 (d) Any voter whose name is not listed on the party  
8 membership list of a party that has exercised the option  
9 provided for in section 12-A, and any voter who refuses to  
10 complete a party membership enrollment card, shall not take or  
11 cast a ballot for that political party in the primary election.

12 (e) The poll-watchers duly designated by a political party  
13 pursuant to section 11-77 shall have the authority and timely  
14 opportunity to review party enrollment cards that voters fill  
15 out pursuant to subsection (c) to ensure that they are properly  
16 completed prior to the voter being given that party's ballot for  
17 the primary election. If any disagreement between a  
18 poll-watcher and a voter relating to the completion of a party  
19 enrollment card cannot be immediately resolved, the voter shall  
20 be entitled to cast a provisional ballot for that party, and the  
21 provisional ballot shall be treated in the same manner as is  
22 provided by law generally for provisional ballots.



1        §12-D Privacy interests of political parties and voters in  
2 membership information and documents. The respective political  
3 parties that submit their membership lists to the chief election  
4 officer, or clerk in case of county offices, for use in primary  
5 elections, and their respective members, have and retain a  
6 significant privacy interest in the information contained in the  
7 documents within the meaning of section 92F-14. The membership  
8 lists and enrollment cards completed by voters pursuant to  
9 section 12-C shall remain the property of the respective  
10 political parties. The chief election officer, or clerk in the  
11 case of a county office, and the department of the attorney  
12 general may copy the membership lists or portions thereof solely  
13 for the limited purposes set out in section 12-C. Completed  
14 enrollment cards may not be copied, except with respect to the  
15 resolution of disputes relating to provisional ballots.

16        §12-E Return of party membership documents to party. As  
17 soon as practical after a primary election in which a party has  
18 designated its primary election to be limited to party members,  
19 and in any event not more than ten days after the election, the  
20 chief election officer, or clerk in case of county offices,  
21 shall return to the party all party membership lists and copies  
22 thereof, all party enrollment cards that have been completed by



1 voters pursuant to section 12-C, as well as unused enrollment  
2 cards."

3 SECTION 3. Section 12-31, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§12-31 Selection of party ballot; voting. [Nø] Except as  
6 otherwise provided in this chapter, no person eligible to vote  
7 in any primary or special primary election shall be required to  
8 state a party preference or nonpartisanship as a condition of  
9 voting [~~Each~~], and each voter shall be issued the primary or  
10 special primary ballot for each party and the nonpartisan  
11 primary or special primary ballot. A voter shall be entitled to  
12 vote only for candidates of one party or only for nonpartisan  
13 candidates. If the primary or special primary ballot is marked  
14 contrary to this paragraph, the ballot shall not be counted.

15 In any primary or special primary election in the year 1979  
16 and thereafter, a voter shall be entitled, subject to the  
17 provisions of this chapter, to select and to vote the ballot of  
18 any one party or nonpartisan, regardless of which ballot the  
19 voter voted in any preceding primary or special primary  
20 election."



1 SECTION 4. The chief election officer shall take all  
2 actions necessary and proper to ensure that the provisions of  
3 this Act shall be implemented in the 2012 election cycle.

4 SECTION 5. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: Calvin K. Boy

BY REQUEST

JAN 25 2011





**Report Title:**

Primary Elections; Parties

**Description:**

Establishes an option for political parties to limit participation in a primary election to persons who are members of that political party.

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

