
A BILL FOR AN ACT

RELATING TO ELECTIONEERING COMMUNICATIONS.

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

1 SECTION 1. The legislature finds that democracy is best
2 served when voters are informed about the sources of advertising
3 seeking to influence their vote, and every citizen is afforded a
4 reasonably equal opportunity to influence the outcome of each
5 election.

6 The legislature further finds that candidate committees
7 must publicly report the source of every donation and details of
8 every expenditure, and have well established and reasonable
9 limits on the amounts of any political donation a candidate may
10 accept, which ensures citizens a reasonably equal opportunity to
11 participate in supporting candidates and influencing elections.

12 However, in recent years the influence of noncandidate
13 committees operating without meaningful transparency in the
14 sources of their money and without limits on how much they can
15 raise or spend has begun to reduce transparency and undermine
16 any reasonably equal opportunity for citizens to participate in
17 and influence elections. This is especially true when



1 noncandidate committees enable one or a few individuals with
2 significant resources to have a much greater influence on
3 elections than an average citizen might otherwise have.

4 While the State is limited by the federal government in its
5 ability to address citizens' concerns about money in politics,
6 the legislature finds it is in the public interest to encourage
7 public support for candidate committees which have strict
8 reporting and contribution limits which enable a more equal
9 opportunity for citizens to participate, rather than non-
10 candidate committees through which unlimited sums of money from
11 unknown sources can often be directed by a few individuals
12 resulting in some individuals having an unreasonably larger
13 influence on election outcomes than the average citizen.

14 The legislature further finds that the use of clandestine
15 social media electioneering communications by noncandidate
16 committees to target specific demographics has been difficult
17 for the public to track and assess, requiring additional
18 transparency. Additionally, noncandidate committees have begun
19 to avoid listing their top contributors in advertisements by
20 intentionally running advertisements designed to exploit a
21 loophole in current laws which defies the spirit of Hawaii's



1 disclosure statute and leaves voters in the dark about who funds
2 those electioneering communications.

3 The legislature further finds that logistical flaws in
4 current electioneering communication laws mean an electioneering
5 communication report must be filed for every single expenditure
6 no matter how small, including one for every single envelope
7 mailed, once spending an aggregate of \$2,000. Flaws in the law
8 also create ambiguity as to when those reports must be made,
9 which in practice leaves gaping loopholes in situations in which
10 a contract has been executed for communications throughout an
11 election season, leaving voters in the dark.

12 Accordingly, the purpose of this Act is to provide voters
13 with greater transparency and reporting for noncandidate
14 committees which currently allow some individuals to wield an
15 unreasonable unequal influence on elections. Further, this Act
16 clarifies and fixes existing loopholes and flaws in
17 electioneering communications laws. Finally, this Act makes it
18 easier for candidate committees with strict reporting
19 requirements, and contribution limits that ensure citizens a
20 more equal opportunity to influence the outcome of each
21 election, to play a greater role in the democratic process by



1 communicating without the added redundancy of having to report
2 each expenditure through both an electioneering communication
3 notification and an expenditure report.

4 SECTION 2. Section 11-341, Hawaii Revised Statutes, is
5 amended as follows:

6 1. By amending subsection (a) to read:

7 "(a) Each [~~person who~~] noncandidate committee that makes
8 an expenditure for electioneering communications in an aggregate
9 amount of more than \$2,000 during any calendar year shall file
10 with the commission a statement of information within twenty-
11 four hours of each disclosure date provided in this section."

12 2. By amending subsection (b) to read:

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

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



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



1 the purpose of publishing or broadcasting the
 2 electioneering communications;

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

8 ~~+(8)]~~ (7) Whether or not any electioneering communication
 9 is made in coordination, cooperation, or concert with
 10 or at the request or suggestion of any candidate,
 11 candidate committee, or noncandidate committee, or
 12 agent of any candidate if any, and if so, the
 13 identification of the candidate, candidate committee,
 14 or noncandidate committee, or agent involved; and

15 ~~[(9)]~~ (8) The three top contributors as required under
 16 section 11-393, if applicable."

17 3. By amending subsection (d) to read:
 18 "(d) For purposes of this section:
 19 "Disclosure date" means, for every calendar year~~[, the~~
 20 ~~first date by which a person has made expenditures during that~~
 21 ~~same year of more than \$2,000 in the aggregate for~~

1 ~~electioneering communications, and the date of any subsequent~~
2 ~~expenditures by that person for electioneering communications.] :~~

3 (1) The first date on which an electioneering
4 communication is publicly distributed; provided that
5 the person making the electioneering communication has
6 made expenditures for electioneering communications of
7 more than \$2,000 in the aggregate during that same
8 year;

9 (2) Any other date on which an electioneering
10 communication is publicly distributed during that same
11 year; provided that the person making the
12 electioneering communication has made expenditures for
13 electioneering communications of more than \$2,000 in
14 the aggregate since the most recent disclosure date
15 during that calendar year; and

16 (3) Any other date on which an electioneering
17 communication is publicly distributed on any social
18 media platform in any amount.

19 "Electioneering communication" means any advertisement that
20 is broadcast from a cable, satellite, television, or radio



1 broadcast station; published in any periodical or newspaper or
2 by electronic means; or sent by mail [~~at a bulk rate~~], and that:

- 3 (1) Refers to a clearly identifiable candidate;
- 4 (2) Is made, or scheduled to be made, [~~either~~] within
5 [~~thirty~~] ninety days prior to a primary, general,
6 initial special election, or [~~initial~~] special
7 election [~~or within sixty days prior to a general or~~
8 ~~special election~~]; and
- 9 (3) Is not susceptible to any reasonable interpretation
10 other than as an appeal to vote for or against a
11 specific candidate.

12 "Electioneering communication" shall not include
13 communications:

- 14 (1) In a news story or editorial disseminated by any
15 broadcast station or publisher of periodicals or
16 newspapers, unless the facilities are owned or
17 controlled by a candidate, candidate committee, or
18 noncandidate committee;
- 19 [~~(2)~~] ~~That constitute expenditures by the expending~~
20 ~~organization;~~
- 21 ~~(3) In-house]~~ (2) In-house bulletins; or



1 ~~[-(4)]~~ (3) That constitute a candidate debate or forum, or
2 solely promote a debate or forum and are made by or on
3 behalf of the person sponsoring the debate or forum."

4 4. By repealing subsection (e):

5 "~~[(e) For purposes of this section, a person shall be~~
6 ~~treated as having made an expenditure if the person has executed~~
7 ~~a contract to make the expenditure.]~~"

8 SECTION 3. Section 11-393, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "~~[+] §11-393 [†]~~ **Identification of ~~[certain top]~~**
11 **contributors to noncandidate committees making only independent**
12 **expenditures.** (a) An advertisement shall contain an additional
13 notice in a prominent location immediately after or below the
14 notices required by section 11-391, if the advertisement is
15 broadcast, televised, circulated, or published, including by
16 electronic means, and is paid for by a noncandidate committee
17 that certifies to the commission that it makes only independent
18 expenditures. This additional notice shall start with the
19 words, "The three top contributors to the noncandidate committee
20 that paid for this advertisement are", followed by the names of
21 the three top contributors ~~[, as defined in subsection (e),]~~ who



1 made the highest aggregate contributions to the noncandidate
2 committee [~~for the purpose of funding the advertisement~~];
3 provided that:

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

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

18 ~~(3) If a noncandidate committee is unable to identify any~~
19 ~~top contributors who made contributions for the~~
20 ~~purpose of funding the advertisement, the additional~~
21 ~~notice shall start with the words, "The three top~~



1 ~~contributors for this noncandidate committee are",~~
2 ~~followed by the names of the three top contributors~~
3 ~~who made the highest aggregate contributions to the~~
4 ~~noncandidate committee; and~~

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

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

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



1 ~~noncandidate committee are", as appropriate]~~, followed by the
2 names of the three top contributors.

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

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

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



1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.
3 SECTION 5. This Act shall take effect upon its approval.



Report Title:

Hawaii Campaign Spending Commission Package; Electioneering Communication; Disclosure Dates

Description:

Applies the electioneering communication section only to noncandidate committees. Amends the definition of "disclosure date" to mean the date when the electioneering communication is publicly distributed. Expands the definition of "electioneering communication" in section 11-341(d), HRS, to apply to advertisements: (1) sent by any mail rate; (2) that are expenditures of an organization; and (3) are made or scheduled to be made within 90 days of an election. Repeals section 11-341(e), HRS. Requires any advertisement by a noncandidate committee that makes only independent expenditures to disclose all contributors for the advertisements. (HB164 HD1)

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