

ACT 36

S.B. NO. 1212

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended in the following respects:

(1) By amending section 11-13 to read:

“Sec. 11-13 Rules for determining residency. In determining residency in the State a wife may treat herself separate from her husband. The following rules shall determine residency for State and precinct purposes:

(1) The residence of a person is that place in which his habitation is fixed, and to which, whenever he is absent, he has the intention to return;

- (2) A person does not gain residence in any precinct into which he comes without the present intention of establishing his permanent dwelling place within such precinct;
- (3) If a person resides with his family in one place, and does business in another, the former is his place of residence; but any person having a family, who establishes his dwelling place other than with his family, with the intention of remaining there shall be considered a resident where he has established such dwelling place;
- (4) The mere intention to acquire a new residence without physical presence at such place, does not establish residency, neither does mere physical presence without the concurrent present intention to establish such place as his residence. For the purposes of the election laws there can only be one residence;
- (5) A person does not gain or lose a residence solely by reason of his presence or absence while employed in the service of the United States or of this State, or while a student of an institution of learning, or while kept in an institution or asylum, or while confined in a prison;
- (6) No member of the armed forces of the United States, his spouse or his dependent is a resident of this State solely by reason of being stationed in the State;
- (7) A person loses his residence in this State if he votes in an election held in another state by absentee ballot or in person;
- (8) The term of residence is computed by including the day on which the person's residence commences and by excluding the day of election.
- (9) In case of question, final determination of residence shall be made by the clerk, subject to appeal to the board of registration under part III of this chapter.
- (3) By amending section 11-17 to read:

“Sec. 11-17 Removal from register upon failure to vote; reregistration. The clerk shall, not later than 4:30 p.m. on the sixtieth day after every general election, remove the name of any registered voter failing to vote at the election if such voter also failed to vote at the preceding primary election. For this purpose “to vote” shall mean the depositing of the ballot in the ballot box whether such ballot is blank or later rejected for any reason. In the case of voting machines “to vote” shall mean the voter has activated the proper mechanism and fed his vote into the machine. In the case of absentees “to vote” shall mean seasonably mailing the absentee ballot to the clerk whether or not such ballot was counted.

Any voter whose name has been removed from the register may at any time prior to the closing of the register, as provided in section 11-24, have his name restored in the register by presenting himself to the clerk and reregistering pursuant to section 11-15, or by making application by mail or otherwise pursuant to procedures established by the clerk. The clerk shall require satisfactory evidence to establish the identity of the applicant. The names of all such voters shall be reentered in the register.”

- (4) By amending section 11-111 to read:

“Sec. 11-111 Official and specimen ballots. Ballots issued by the chief election officer in state elections and by the clerk in county elections are official ballots. In elections using the paper ballot and electronic voting systems, the chief election officer or clerk in the case of county elections shall have printed sufficient copies of each ballot to be used at the various precincts so that at least one copy can be posted for each voting unit. These copies will have printed across their faces in large bold letters, and with ink of a color plainly contrasting to the color of the paper used, the word “Specimen”. In preparing specimen ballots for the electronic voting system, the chief election officer or clerk shall use material that will prevent the specimen from being counted by the ballot reading device. The copies of the specimen ballots shall be forwarded to the precinct officials with the official ballots. The precinct officials shall post the specimen ballots near the entrance to the polling place where they may be easily seen by the voters prior to voting.”

(5) By amending section 11-112 to read:

“Sec. 11-112 Contents of ballot. A ballot shall contain the names of the candidates, their party affiliation or nonpartisanship, the offices for which they are running, and the district in which the election is being held. The name of the candidate may be printed with the Hawaiian or English equivalent or nickname, if the candidate so requests in writing at the time his nomination papers are filed. Candidates’ names, including the Hawaiian or English equivalent or nickname, shall be set on one line.

In multirace districts the ballot shall state that the voter shall not vote for more than the number of seats available or the number of candidates listed where such number is less than the seats available.

A ballot shall bear no word, motto, device, sign, or symbol other than allowed in this title.”

(6) By amending section 11-119 to read:

“Sec. 11-119 Printing; quantity. The ballots shall be printed by order of the chief election officer or the clerk in the case of county elections. In any state or county election the chief election officer on agreement with the clerk may consolidate the printing contracts for similar types of ballots where such consolidation will result in lower costs.

Each precinct shall receive a sufficient number of ballots based on the number of registered voters and the expected spoilage in the election concerned. A sufficient number of absentee ballots shall be delivered to each clerk not later than 4:30 p.m. on the tenth day prior to the date of any election. Each clerk shall, as soon as may be practical after the election, certify to the chief election officer the actual number of ballots delivered to absentee voters.”

(7) By amending section 11-132 to read as follows:

“Sec. 11-132 One thousand foot radius; admission within polling place.

(a) The precinct officials shall, prior to opening the polls, set apart an area of one thousand feet in radius around the polling place to prevent interference with the conduct of the election, except that public sidewalks, alleys, roads, streets, and highways falling within the one thousand foot radius shall be open to persons and vehicles passing through. Any person who remains or loiters

within the area for the purpose of campaigning shall be guilty of a misdemeanor.

(b) Admission within the polling place shall be limited to the following:

(1) Election officials;

(2) Watchers, if any, pursuant to section 11-77;

(3) Candidates;

(4) Any voters actually engaged in voting, going to vote or returning from voting;

(5) Any person, designated by a voter who is physically disabled, while he is assisting the voter; and

(6) Any person or nonvoter group authorized by the chief election officer or the clerk in county elections to observe the election at designated precincts for educational purposes provided that they conduct themselves so that they do not interfere with the election process.”

(7A)† By amending section 11-133 to read:

“**Sec. 11-133 Voting booths; placement of visual aids.** The precinct officials shall provide sufficient voting booths within the polling place at or in which the voters may conveniently cast their ballots. The booths shall be so arranged that in casting the ballots the voters are screened from the observation of others.

Visual aids, including specimen ballots, shall be posted at or in each voting booth and in conspicuous places outside the polling place before the opening of the polls.”

(8) By amending section 11-134 to read:

“**Sec. 11-134 Ballot transport containers; ballot boxes.** The seals of the ballot transport containers shall be broken and opened on election day only in the presence of at least two precinct officials not of the same political party.

The chief election officer shall provide suitable ballot boxes for each polling place needed. They shall have a hinged lid fastened securely by a good lock or locks. In the center of the lid there shall be an aperture of the appropriate size for the voting system used. The ballot boxes shall be placed at a point convenient for the deposit of ballots and where they can be observed by the precinct officials.

At the opening of the polls for the election, the chairman of the precinct officials shall publicly open the ballot boxes and expose them to all persons present to show that they are empty. The ballot boxes shall be closed and locked; they shall remain locked until the polls are closed except where the early collection of ballots has been authorized pursuant to section 11-135.”

(9) By amending section 11-135 to read:

“**Sec. 11-135 Early collection of ballots.** The chief election officer may authorize collection of voted ballots before the closing of the polls in order to facilitate the counting of the ballots.”

(10) By amending section 11-137 to read:

†Renumbered to correct clerical error; as enacted it was numbered (10).

“Sec. 11-137 Secrecy; removal or exhibition of ballot. No person shall look at or ask to see the contents of the ballot of any voter, except as provided in section 11-139, nor shall any person within the polling place attempt to influence a voter in regard to whom he shall vote for. When a voter is in the voting booth for the purpose of voting, no other person shall, except as provided in section 11-139, be allowed to enter the booth or to be in a position from which he can observe how the voter votes.

No person shall take a ballot out of the polling place except as provided in sections 11-135 and 11-139. After voting the voter shall leave the voting booth and deliver his ballot to the precinct official in charge of the ballot boxes. The precinct official shall make certain that he has received the correct ballot and no other and then shall drop the ballot into the ballot box. If any person having received a ballot leaves the polling place without first delivering the ballot to the precinct official as provided above, or wilfully exhibits his ballots, except as provided in section 11-139, after the ballot has been marked, such person shall forfeit his right to vote, and the chairman of the precinct officials shall cause a record to be made of the proceeding.”

(11) By amending section 11-140 to read:

“Sec. 11-140 Spoiled ballots. In elections using the paper ballot and electronic voting systems, if a voter spoils a ballot, he may obtain another upon returning the spoiled one. The ballot returned shall be canceled immediately, and the reasons for the cancellation endorsed thereon and signed by the chairman of the precinct officials.”

(12) By amending section 11-151 to read:

“Sec. 11-151 Vote count. Each contest or question on a ballot shall be counted independently as follows:

- (1) If the votes cast in a contest or question are equal to or less than the number to be elected or chosen for that contest or question, the votes shall be counted.
- (2) If the votes cast in a contest or question exceed the number to be elected or chosen for that contest or question, the votes for that contest or question shall not be counted.”

(13) By amending section 11-152 to read:

“Sec. 11-152 Method of counting. (a) In an election using the paper ballot voting system, immediately after the close of the polls, the chairman of the precinct officials shall open the ballot box. The precinct officials at the precinct shall proceed to count the votes as follows:

- (1) The whole number of ballots shall first be counted to see if their number corresponds with the number of ballots cast as recorded by the precinct officials;
- (2) If the number of ballots corresponds with the number of persons recorded by the precinct officials as having voted, the precinct officials shall then proceed to count the vote cast for each candidate;
- (3) If there are more ballots or less ballots than the record calls for the precinct officials shall proceed as directed in section 11-153.
- (b) In those precincts using the electronic voting system, the chairman of the precinct officials shall open the ballot box or boxes and the ballots shall

be taken to the counting center according to the procedure and schedule promulgated by the chief election officer to promote the security of the ballots. In the presence of official observers, counting center employees may start to count the ballots prior to the closing of the polls provided there shall be no printout by the computer or other disclosure of the number of votes cast for a candidate or on a question prior to the closing of the polls.”

(14) By amending section 11-153 to read:

“**Sec. 11-153 More or less ballots than recorded.** If there are more ballots than the poll book indicates, this shall be an overage, and if less ballots, it shall be an underage. The election officials or counting center employees responsible for the tabulation of ballots shall make a note of this fact on a form to be provided by the chief election officer. The form recording the overage or underage shall be sent directly to the chief election officer or the clerk in county elections separate and apart from the other election records.

If the electronic voting system is being used in an election, the overage or underage may be recorded after the tabulation of the ballots. In an election using the paper ballot voting system, the precinct officials shall proceed to count the vote cast for each candidate or on a question after recording the overage or underage.

As soon after the election as possible the chief election officer or the clerk shall make a list of all precincts in which an overage or underage occurred and the amount of the overage or underage. This list shall be kept as a public record in the office of the chief election officer or the clerk in county elections and the clerk’s office in counties other than the city and county of Honolulu in elections involving state candidates.

An election contest may be brought under part XI, if the overage or underage in any district could affect the outcome of an election.”

(15) By amending section 11-172 to read:

“**Sec. 11-172 Contests for cause; generally.** With respect to any election, any candidate, or qualified political party directly interested, or any thirty voters of any election district, may file a complaint in the supreme court. The complaint shall set forth any cause or causes, such as but not limited to, provable fraud, overages, or underages, that could cause a difference in the election results. The complaint shall also set forth any reasons for reversing, correcting, or changing the decisions of the precinct officials or the officials at a counting center in an election using the electronic voting system.”

(16) By amending section 11-181 to read:

“**Sec. 11-181 Capital equipment.** The State shall pay for all voting system capital equipment. This shall include, but not be limited to voting machines, voting devices, and initial computer programs.”

SECTION 2. Chapter 12, Hawaii Revised Statutes, is amended in the following respects:

(1) By amending section 12-2 to read:

“**Sec. 12-2 Primary held when; candidates only those nominated.** The primary shall be held at the regular polling place for each precinct on the first Saturday of October in every even numbered year.

No person shall be a candidate for any general or special general election unless he has been nominated in the immediately preceding primary or special primary.

(2) By amending section 12-3 to read:

"Sec. 12-3 Nomination paper: format; limitations. The name of no candidate shall be printed upon any official ballot to be used at any primary, special primary, or special election unless a nomination paper was filed in his behalf and in the name by which he is commonly known. The nomination paper shall be in a form prescribed by the chief election officer containing substantially the following information:

- (1) A statement by the registered voters of the district from which the candidate is running signing the form that their primary election ballot preference designation will allow them to vote for the candidate at the next election;
- (2) A statement by the registered voters that they nominate the candidate for the office on the nomination paper;
- (3) The residence address and county in which the candidate resides;
- (4) The name of the candidate and the office for which he is running, which name and office is to be placed on the nomination paper by the chief election officer or the clerk prior to releasing the form to the candidate;
- (5) Space for the names of the registered voters signing the form and their district or districts and precinct or precincts;
- (6) A certification by the candidate that he will qualify under the law for the office he is seeking;
- (7) A certification by a party candidate that he is a member of the party, that he believes in the principles and policies of that party, that if elected he will carry out the provisions and pledges of the political platform of the party and will abide by the party's rules and regulations;
- (8) The name the candidate wishes inserted on the ballot and the post office address of the candidate.

No signatures shall be counted, unless they are upon the nomination paper having the format set forth above, written or printed thereon, and if there are separate sheets to be attached to the nomination paper, the sheets shall have the name of the person and the office for which he is running placed thereon by the chief election officer or the clerk. The nomination paper and separate sheets shall be provided by the chief election officer or the clerk.

Nomination papers shall not be filed in behalf of any person for more than one party or for more than one office; nor shall any person file nomination papers both as a party candidate and as a nonpartisan candidate.

The office for which the candidate is running and his name may not be changed from that indicated on the nomination paper and separate sheets. If the candidate wishes to run for an office different from that for which the nomination paper states, he may request the appropriate nomination paper from the chief election officer or clerk and have it signed by the required number of voters."

(3) By amending section 12-6 to read:

“Sec. 12-6 Nomination papers: time for filing; fees. Nomination papers shall be filed as follows:

- (1) For members of Congress, state, and county offices, with the chief election officer or clerk in case of county offices not later than 4:30 p.m. on the forty-fifth day prior to the primary, special primary, or special election (but if such day is a Saturday, Sunday, or holiday then not later than 4:30 p.m. on the first working day immediately preceding); provided that any state candidate from the counties of Hawaii, Maui, and Kauai may file his declaration of candidacy with his respective clerk. The clerk shall transmit to the office of the chief election officer the state candidate’s declaration of candidacy without delay. However, if a special primary or special election is to be held by a county and the county charter requires that the council shall issue a proclamation calling for the election to be held within a specified period of time, and if that requirement would not allow the filing of nomination papers with the appropriate office by the sixtieth day prior to the day for holding such primary or special election, the council shall establish the deadline for the filing of nomination papers in the proclamation calling for the election.
- (2) There shall be deposited with each nomination a fee on account of the expenses attending the holding of the primary, special primary, or special election which shall be paid into the treasury of the State, or the county, as the case may be, as a realization:
 - (A) For governor, lieutenant governor, United States senators, and United States representatives-\$75;
 - (B) For mayor-\$50; and
 - (C) For all other offices-\$25.
- (3) Upon the receipt by the chief election officer or the clerk of the nomination paper of a candidate, the day, hour, and minute when it was received shall be endorsed thereon.”
- (4) By amending to read:

“Sec. 12-8 Nomination papers: challenge. (a) All nomination papers filed in conformity with section 12-3 shall be deemed valid unless objection is made thereto by the chief election officer or the clerk in the case of county offices or by a registered voter in writing. Such objection is to be made not later than 4:30 p.m. on the second day after the close of filing or the next succeeding working day. In case objection is made, notice thereof shall be given including notification by registered or certified mail to the candidate objected thereto. All objections shall be decided by the chief election officer or clerk not later than 4:30 p.m. on the second day after they are made. All objections which are upheld shall be placed in writing by the deciding official if so requested by the candidate affected.”

SECTION 3. Chapter 15, Hawaii Revised Statutes, is repealed and a new chapter is added to be designated and to read:

“CHAPTER 15 ABSENTEE VOTING

“**Sec. 15-1 Definitions.** As used in this chapter, unless the context otherwise requires:

“Absentee ballot” means a ballot as defined in section 11-1 used in absentee voting.

“Invalid ballot” means an absentee ballot which does not meet the requirements for a ballot to be counted as listed in section 15-9.

“Voter in a remote area” means any registered voter who resides ten miles or more from his designated polling place by the most direct route for public travel.

Sec. 15-2 Who may vote by absentee ballot. Any voter may cast an absentee ballot subject to this chapter and rules promulgated by the chief election officer if he is a voter in a remote area or he is unable to appear at his polling place during the hours of voting because of one of the following reasons:

- (1) Absence from the island, county, or district in which he is registered on election day;
- (2) Confinement in any hospital;
- (3) Confinement in any public institution for the care of indigents or aged persons;
- (4) Confinement in any leprosy institution or settlement located on the same island in which he is registered to vote or in the county of Kalawao;
- (5) Confinement in any penal institution for a misdemeanor or as a pre-trial detainee;
- (6) Confinement to his home because of illness or physical disability; or
- (7) Conflicting religious belief, ruling, doctrine, or standard.

Any other voter unable to appear at his polling place on election day for causes determined by the chief election officer by rule to be good and sufficient shall be entitled to vote as provided by this chapter and the rules promulgated thereunder.

Sec. 15-3 Absentee ballot for presidential election. If ineligible to qualify as a voter in the State to which he has moved, any former registered voter of Hawaii may vote an absentee ballot in any presidential election occurring within twenty-four months after leaving Hawaii by requesting an application form and returning it properly executed to the clerk of the county of his prior Hawaii residence. When requesting an application form for an absentee ballot, the applicant shall specify his eligibility for only the presidential ballot, and the fact of applicant’s ineligibility to vote at his new place of residence verified by the voter registrar or his authorized representative in the jurisdiction of the applicant’s new residence. The application must be received in sufficient time for ballots to be mailed and returned prior to any presidential election at which the applicant wishes to vote. All required information pursuant to the rules promulgated by the chief election officer shall be completed in full.

Sec. 15-4 Request for absentee ballot. Any person entitled to vote under

this chapter may request an absentee ballot in person or in writing from the clerk not earlier than on the sixtieth day and not later than 4:30 p.m. on the seventh day prior to the election except in special cases as provided in the rules promulgated by the chief election officer.

The request shall include information such as the address under which the person is registered, the establishment of his right to an absentee ballot, and the address to which he wishes his ballot forwarded. The request, when made for any primary or special primary election, may include an additional request for an absentee ballot to be voted at any election immediately following the primary or special primary provided the person so indicates in his request.

Subsequent to the closing of registration for each election, the clerk may mail a request form for an absentee ballot to each voter in a remote area who has not already made such a request. The request form shall be accompanied by:

- (1) A stamped, self-addressed envelope; and
- (2) Instructions regarding the manner of completing and returning the request form.

Any voter requesting an absentee ballot for a primary or special primary election who has not voted in a primary or special primary election since 1968 shall state his selection of party ballot, non-partisan ballot or of only the official board of education ballot in his request.

Sec. 15-5 Delivery of ballots. Immediately upon receipt of a request within the time limit specified in section 15-4, the clerk shall examine the records to ascertain whether or not the voter is lawfully entitled to vote as requested. As soon as the printed official ballots are available, the clerk shall mail in a forwarding envelope, via airmail if necessary, or deliver in person if the voter appears at the office of the clerk an official ballot and other materials prescribed in section 15-6 except that an incapacitated voter may send a representative to obtain his ballots pursuant to the rules promulgated by the chief election officer. All requests received upon the last day of receipt shall be mailed to the voter requesting the same as soon as reasonably practicable, but in no event later than twenty-four hours after receipt thereof.

Sec. 15-6 Reply envelope; instructions. The clerk shall enclose the ballot in an unsealed reply envelope to be furnished by him and which shall contain a statement to be subscribed to by the voter which affirms the fact that he is the person voting, the instruction that his ballot will be valid only if the affirmation statement is signed, and any other information prescribed by the rules promulgated by the chief election officer.

Sec. 15-7 Absentee precinct. An absentee precinct shall be established at the office of the respective clerks or a place designated by the clerk under the provisions prescribed in the rules promulgated by the chief election officer. The absentee precinct shall meet before election day to handle the absentee voters who are voting in person.

Sec. 15-8 Absentee ballot container. An absentee ballot container or containers shall be provided in the absentee precinct for the purpose of depositing the reply envelopes and the ballots cast by those who vote in person

at the absentee precinct. The container shall be secured in accordance with rules promulgated by the chief election officer.

Tampering with the container or opening it before the time prescribed in section 15-9 shall be an election offense under section 19-6.

Sec. 15-9 Return and receipt of absentee ballots. The reply envelope shall be:

- (1) Mailed and must be received by the clerk issuing the absentee ballot not later than the closing of the polls on any election day; or
- (2) Delivered other than by mail to the clerk issuing the absentee ballot not later than the closing of the polls on any election day.

Upon receipt of the reply envelope from any person voting under this chapter, the clerk or the precinct officials of the absentee precinct shall time stamp the reply envelope and deposit it in the correct absentee ballot container. On election day the container shall be opened by the precinct officials of the absentee precinct.

Prior to opening the envelopes and counting the ballots, the envelopes shall be checked for the following:

- (1) Signature on the affirmation statement;
- (2) Whether the signature corresponds with the absentee request or register; and
- (3) Whether the person is a registered voter and has complied with the requirements of sections 11-15 and 11-16.

If any of the above requirements is not met or if the envelope appears to be tampered with, the clerk or the precinct official shall mark across the face of the envelope "invalid" and it shall be kept in the custody of the clerk and disposed of as prescribed for ballots in section 11-154.

If an absentee precinct is established at the clerk's office prior to election day, the precinct officials of the absentee precinct shall check the envelopes for the above requirements prior to depositing them in the correct absentee ballot container. All envelopes that have been marked as invalid prior to election day shall be rechecked on election day.

Sec. 15-10 Counting of absentee ballots. If the requirements in section 15-9 are met, the reply envelope may be opened and the ballot counted as prescribed by law for the voting system in use.

In those absentee precincts using paper ballots, counting of the absentee votes may begin after noon of election day.

In those absentee precincts using the electronic voting system, the absentee ballots shall be transported to the counting center in a manner and by a schedule as provided in the rules promulgated by the chief election officer. In no case, however, shall the results of the absentee count become publicly known before the polls have officially closed.

Any person violating this section shall be guilty of an election offense under section 19-6.

Sec. 15-11 Voting by absentee voter at polls prohibited. Any person having voted an absentee ballot pursuant to this section shall not be entitled to cast a ballot at the polls on election day. An absentee voter who does cast

a ballot at the polls shall be guilty of an election offense under section 19-3 (5).

Sec. 15-12 Receipt and disposition of late absentee ballots. For any election all reply envelopes containing absentee ballots received by the clerk after the deadline for receipt stated in section 15-9 shall be kept unopened and disposed of pursuant to section 11-154.

Sec. 15-13 Death of voter prior to opening of polls. Whenever sufficient proof is shown to the clerk or precinct officials that an absentee voter who has returned his reply envelope has died prior to the opening of the polls on the date of election, his ballot shall be deemed invalid and disposed of pursuant to section 11-154. The casting of any such ballot shall not invalidate the election.

Sec. 15-14 Ballots; where voting machines are used. In all precincts in which voting machines are used sections 15-1 to 15-13 shall apply provided that the number and type of absentee ballots to be printed shall be determined at the discretion of the officer charged with printing and furnishing them. The officer may use reasonable facsimiles of the sample ballot used in voting machine precincts."

SECTION 4. Chapter 15A, Hawaii Revised Statutes, is repealed.

SECTION 5. Chapter 16, Hawaii Revised Statutes, is amended in the following respects:

(1) By amending the title of Chapter 16, Part II, Hawaii Revised Statutes, to read:

"PART II. VOTING MACHINE SYSTEM"

(2) By amending section 16-11 to read:

"Sec. 16-11 Definitions. "Voting machine system" means the method of electrically, mechanically, or electronically recording and counting votes upon being cast.

"Protective counter" means an apparatus built into the voting machine which cannot be reset, which records the total movement of the operating lever."

(3) By amending the title of Chapter 16, Part III, Hawaii Revised Statutes, to read:

"PART III. PAPER BALLOT VOTING SYSTEM"

(4) By amending section 16-21 to read:

"Sec. 16-21 Definition. "Paper ballot voting system" means the method of recording votes which are counted manually."

(5) By amending the title of Chapter 16, Part IV, Hawaii Revised Statutes, to read:

"PART IV. ELECTRONIC VOTING SYSTEM"

(6) By amending section 16-41 to read:

"Sec. 16-41 Definitions. "Electronic voting system" means the method of recording votes which are counted by automatic tabulating equipment.

"Counting center" means the computer facilities and surrounding prem-

ises designated by the chief election officer or the clerk in county elections where electronic voting system ballots are counted.

“Defective ballot” means any ballot delivered to the counting center in accordance with section 11-152 that cannot be read by the ballot reading device.”

(7) By amending section 16-43 to read:

“**Sec. 16-43 Ballot handling.** In every case where the ballots are handled by election officials or election employees, from the time the ballots are delivered to the several precincts to the time they are returned to the chief election officer or clerk in county elections for disposition upon completion of the tabulation, they shall be handled in the presence of not less than two officials assigned in accordance with sections 11-71 and 11-72 or section 16-45.”

(8) By amending section 16-44 to read:

“**Sec. 16-44 Counting center employees.** (a) The chief election officer or clerk in county elections shall designate counting center employees who will be responsible for the tabulation of the ballots.

(b) Counting center employees shall follow the procedures established by the chief election officer for the tabulation of the ballots.”

(9) By adding the following new sections to be appropriately designated and to read:

“**Sec. 16-45 Official observers.** Official observers shall be designated by the chief election officer or the clerk in county elections to be present at the counting centers and selected in the following manner:

- (1) No less than one official observer designated by each political party;
- (2) No less than one official observer from the news media;
- (3) Additional official observers as space and facilities permit designated by the chief election officer in state elections and the clerk in county elections.

The chief election officer or clerk shall give all official observers reasonable notice of the time and place where the ballots shall be counted. No person shall be permitted in the counting center without the written authorization of the chief election officer or clerk.

“**Sec. 16-46 Counting defective ballots.** Counting center employees in the presence of at least two official observers shall prepare a new ballot to replace each defective ballot. The defective ballots shall be segregated and the replacement ballots counted pursuant to rules promulgated by the chief election officer.”

SECTION 6. Section 19-6, Hawaii Revised Statutes, is amended to read:

“**Sec. 19-6 Misdemeanors.** The following persons shall be guilty of a misdemeanor:

- (1) Any person who offers any bribe or makes any promise of gain, or with knowledge of the same permits any person to offer any bribe or make any promise of gain for his benefit, to any voter to induce him to sign a nomination paper, and any person who accepts any bribe or promise of gain of any kind as consideration for signing the same,

whether the bribe or promise of gain be offered or accepted before or after the signing.

- (2) Any person who wilfully tears down or destroys or defaces any election proclamation or any poster or notice or list of voters or visual aids or specimen ballot, issued or posted by authority of law.
- (3) Any person printing or duplicating or causing to be printed or duplicated any ballot, conforming as to the size, weight, shape, thickness, or color, to the official ballot so that it could be cast or counted as an official ballot in an election.
- (4) Every person who is disorderly or creates a disturbance whereby any meeting of the precinct officials or the board of registration of voters during an election is disturbed or interfered with; or whereby any person who intends to be lawfully present at any meeting or election is prevented from attending; or who causes any disturbance at any election; and every person assisting or aiding or abetting any disturbance.
- (5) Every person who, either in person or through another, in any manner breaks up or prevents, or endeavors to break up or prevent, the holding of any meeting of the board of registration of voters, or in any manner breaks up or prevents, or endeavors to break up or prevent, the holding of any election.
- (6) Any person, other than those designated by section 11-132, who remains or loiters within the area set aside for voting as set forth in section 11-132 during the time appointed for voting.
- (7) Any person, including candidates carrying on any campaign activities within the area described in section 11-132 on the day on which an election is being held for the purpose of influencing votes. Campaign activities shall include but not be restricted to the following:
 - (A) The distribution, circulation, posting, or staking of campaign cards, pamphlets, and other literature;
 - (B) The use of public address systems and other public communication media;
 - (C) The use of motor caravans or parades; and
 - (D) The use of entertainment troupes or the free distribution of goods and services.

The "day of election" as used in this paragraph shall commence at midnight of the day before the polls are opened and shall end with the closing of the polls.

- (8) Any person who opens a reply envelope containing an absentee ballot voted under chapter 15 other than those authorized to do so under chapter 15.
- (9) Any voter who makes any false statement in any affidavit required for absentee voting under chapter 15.
- (10) Every person who, being a candidate for election, or an agent of any candidate, or a member of any committee acting for or on behalf of any candidate, or in charge of any committee or political party to which money is contributed during an election or which spends money in any election, fails to file the statement of expenses or lack of expenses, as

required by law.

- (11) Any person making any anonymous contribution to any candidate, party, or committee as defined in section 11-191, or any candidate, party, or committee receiving any such contribution or entering any contribution falsely in his accounts.
- (12) Any unauthorized person found in possession of any voting machine or keys thereof.
- (13) Every person who wilfully violates or fails to obey any of the provisions of law, punishment for which is not otherwise in this chapter especially provided for.
- (14) Any person who, knowing that he is not entitled to register or vote, registers or votes; and any person taking any oath in this title prescribed or authorized to be administered and wilfully making oath to any false statement of fact, or wilfully making a false answer to any question put to him thereunder.”

SECTION 7. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 8. This Act shall take effect upon its approval.

(Approved May 3, 1975.)

*Edited accordingly.