

ACT 109

S.B. NO. 144

A Bill for an Act Relating to Lobbyists.

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

SECTION 1. The legislature finds that the existing mens rea requirement established under section 97-7, Hawaii Revised Statutes, to prove a violation of the lobbyist law is no longer appropriate, since the failure to file a statement or report with the state ethics commission is no longer a criminal offense. Accordingly, the purpose of this Act is to:

- (1) Repeal the restriction on access to transcripts from public contested hearings;
- (2) Repeal the requirement of proof that a violation of the lobbyist law was committed wilfully and replace it with a requirement of proof that the violation was committed negligently; and
- (3) Authorize the state ethics commission to assess an administrative fine pursuant to a settlement agreement.

SECTION 2. Section 97-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If after twenty days following service of the charge and further statement of alleged violation in accordance with this section, a majority of the members of the commission conclude that there is probable cause to believe that a violation of this chapter has been committed, then the commission shall set a

time and place for a hearing, giving notice to the complainant and the alleged violator in the same manner as provided in subsection (b). Upon the commission's issuance of a notice of hearing, the charge and further statement of alleged violation and the alleged violator's written response thereto shall become public records. The hearing shall be held within ninety days of the commission's issuance of a notice of hearing. If the hearing is not held within that ninety-day period, the charge and further statement of alleged violation shall be dismissed; provided that any delay that is at the request of, or caused by, the alleged violator shall not be counted against the ninety-day period.

All parties shall have an opportunity to:

- (1) Be heard;
- (2) Subpoena witnesses and require the production of any books or papers relative to the proceedings;
- (3) Be represented by counsel; and
- (4) Have the right of cross-examination.

All hearings shall be in accordance with chapter 91. All witnesses shall testify under oath and the hearings shall be open to the public. The commission shall not be bound by the strict rules of evidence but the commission's findings shall be based on competent and substantial evidence.

All testimony and other evidence taken at the hearing shall be recorded. ~~[Copies of transcripts of the record shall be available only to the complainant and the alleged violator at their own expense.]~~ All fees collected under this chapter shall be deposited into the general fund.”

SECTION 3. Section 97-7, Hawaii Revised Statutes, is amended to read as follows:

“**§97-7 Penalties; administrative fines.** (a) Any person who:

- (1) ~~[Wilfully]~~ Negligently fails to file any statement or report required by this chapter;
- (2) ~~[Wilfully]~~ Negligently files a statement or report containing false information or material omission of any fact;
- (3) Engages in activities prohibited by section 97-5; or
- (4) Fails to provide information required by section 97-2 or 97-3;

shall be subject to an administrative fine imposed by the state ethics commission that shall not exceed \$1,000 for each violation of this chapter. All fines collected under this section shall be deposited into the general fund.

(b) No fine shall be assessed unless[;] the state ethics commission:

- (1) ~~[The commission convenes]~~ Convenes a hearing in accordance with section 97-6(c) and chapter 91[;] and renders a decision; or
- (2) ~~[A decision has been rendered by the commission.]~~ Together with the alleged violator, agrees to resolve any alleged violation before the completion of the contested case process; provided that the resolution includes payment of an administrative fine or restitution, or both.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

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

(Approved June 21, 2019.)