HAWAII REVISED STATUTES
CHAPTER 84
STANDARDS OF CONDUCT

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CHAPTER 84
STANDARDS OF CONDUCT

Preamble

The purpose of this chapter is to (1) prescribe a code of ethics for elected officers and public employees of the State as mandated by the people of the State of Hawaii in the Hawaii Constitution, Article XIV; (2) educate the citizenry with respect to ethics in government; and (3) establish an ethics commission which will administer the codes of ethics adopted by the constitutional convention and by the legislature and render advisory opinions and enforce the provisions of this law so that public confidence in public servants will be preserved.

Part I. General Provisions

§84-1 Construction. This chapter shall be liberally construed to promote high standards of ethical conduct in state government.

§84-2 Applicability. This chapter shall apply to every nominated, appointed, or elected officer, employee, and candidate to elected office of the State and for election to the constitutional convention, but excluding justices and judges; provided that in the case of elected delegates and employees of the constitutional convention, this chapter shall apply only to the enforcement and administration of the code of ethics adopted by the constitutional convention.

§84-3 Definitions.

"Business" includes a corporation, a partnership, a sole proprietorship, a trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

"Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by oneself or another.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest be greater or less than fifty per cent.

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices and judges.

"Employment" means any rendering of services for compensation.

"Financial interest" means an interest held by an individual, the individual's spouse, or dependent children which is:

(1) An ownership interest in a business.
(2) A creditor interest in an insolvent business.
(3) An employment, or prospective employment for which negotiations have begun.
(4) An ownership interest in real or personal property.
(5) A loan or other debtor interest.
(6) A directorship or officership in a business.

“Official act" or "official action" means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

"Official authority" includes administrative or legislative powers of decision, recommendation, approval, disapproval, or other discretionary action.

"State agency" includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices, the University of Hawaii, and all independent commissions and other establishments of the state government but excluding the courts.

“Task force” means a group convened by resolution, statute, executive order, proclamation, or by invitation of the legislature, governor, or another state officer, to study a specific subject or issue, for a specific defined period of time, and to report to, offer a recommendation to, or advise the legislature, governor, or a state officer.

Part II. Code of Ethics

§84-11 Gifts. No legislator or employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the legislator or employee in the performance of the legislator's or employee's official duties or is intended as a reward for any official action on the legislator's or employee's part.

§84-11.5 Reporting of gifts. (a) Every legislator and employee shall file a gifts disclosure statement with the state ethics commission on June 30 of each year if all the following conditions are met:

(1) The legislator or employee, or spouse or dependent child of a legislator or employee, received directly or indirectly from one source any gift or gifts valued singly or in the aggregate in excess of $200, whether the gift is in the form of money, service, goods, or in any other form;
(2) The source of the gift or gifts have interests that may be affected by official action or lack of action by the legislator or employee; and
(3) The gift is not exempted by subsection (d) from reporting requirements under this subsection.

(b) The report shall cover the period from June 1 of the preceding calendar year through June 1 of the year of the report.

(c) The gifts disclosure statement shall contain the following information:
(1) A description of the gift;
(2) A good faith estimate of the value of the gift;
(3) The date the gift was received; and
(4) The name of the person, business entity, or organization from whom, or on behalf of whom, the gift was received.

(d) Excluded from the reporting requirements of this section are the following:
(1) Gifts received by will or intestate succession;
(2) Gifts received by way of distribution of any inter vivos or testamentary trust established by a spouse or ancestor;
(3) Gifts from a spouse, fiancé, fiancee, any relative within four degrees of consanguinity or the spouse, fiancé, or fiancee of such a relative. A gift from any such person is a reportable gift if the person is acting as an agent or intermediary for any person not covered by this paragraph;
(4) Political campaign contributions that comply with state law;
(5) Anything available to or distributed to the public generally without regard to the official status of the recipient;

(6) Gifts that, within thirty days after receipt, are returned to the giver or delivered to a public body or to a bona fide educational or charitable organization without the donation being claimed as a charitable contribution for tax purposes; and
(7) Exchanges of approximately equal value on holidays, birthday, or special occasions.

(e) Failure of a legislator or employee to file a gifts disclosure statement as required by this section shall be a violation of this chapter.

(f) This section shall not affect the applicability of section 84-11.

§84-12 Confidential information. No legislator or employee shall disclose information which by law or practice is not available to the public and which the legislator or employee acquires in the course of the legislator's or employee's official duties, or use the information for the legislator's or employee's personal gain or for the benefit of anyone; provided that this section shall not preclude a person who serves as the designee or representative of an entity that is a member of a task force from disclosing information to the entity which the person acquires as the entity's designee or representative.

§84-13 Fair treatment. No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:
(1) Seeking other employment or contract for services for oneself by the use or attempted use of the legislator's or employee's office or position.
(2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.
(3) Using state time, equipment or other facilities for private business purposes.
(4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, or to prevent a person from serving on a task force or from serving on a task force committee, or from making statements or taking official action as a legislator, or a task force member or a task force member's designee or representative. Every legislator, or task force member or designee or representative of a task force member shall file a full and complete public disclosure of the nature and extent of the interest or transaction which the legislator or task force member or task force member's designee or representative believes may be affected by the legislator's or task force member's official action.

§84-13.5 Washington Place; campaign activities. The governor shall not allow Washington Place to be used for any events intended to solicit funds, support, or votes for any candidate for elective public office.

§84-14 Conflicts of interests. (a) No employee shall take any official action directly affecting:
(1) A business or other undertaking in which the employee has a substantial financial interest; or
(2) A private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

A department head who is unable to disqualify the department head's self on any matter described in paragraphs (1) and (2) will not be in violation of this subsection if the department head has complied with the disclosure requirements of section 84-17.

A person whose position on a board, commission, or committee is mandated by statute, resolution, or executive order to have particular qualifications shall only be prohibited from taking official action that directly and specifically affects a business or undertaking in which the person has a substantial financial interest; provided that the substantial financial interest is related to the member's particular qualifications.

(b) No employee shall acquire financial interests in any business or other undertaking which the employee has reason to believe may be directly involved in official action to be taken by the employee.

(c) No legislator or employee shall assist any person or business or act in a representative capacity before any state or county agency for a contingent compensation in any transaction involving the State.

(d) No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which the legislator or employee has participated or will participate as a legislator or employee, nor shall the legislator or employee assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which the legislator or employee is an employee or legislator.

(e) No employee shall assist any person or business or act in a representative capacity before a state or county agency for a fee or other consideration on any bill, contract, claim, or other transaction or proposal involving official action by the agency if the employee has official authority over that state or county agency unless the employee has complied with the disclosure requirements of section 84-17.

(f) Subsections (a), (b), and (d) shall not apply to a task force member or the designee or representative of that task force member whose service as a task force member would not otherwise cause that member, designee, or representative to be considered an employee, if the task force member or the designee or representative of that task force member complies with the disclosure requirements under section 84-17.

§84-15 Contracts. (a) A state agency shall not enter into any contract to procure or dispose of goods or services, or for construction, with a legislator, an employee, or a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of $10,000 unless:

(1) The contract is awarded by competitive sealed bidding pursuant to section 103D-302;
(2) The contract is awarded by competitive sealed proposal pursuant to section 103D-303; or
(3) The agency posts a notice of its intent to award the contract and files a copy of the notice with the state ethics commission at least ten days before the contract is awarded.

(b) A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned. This subsection shall not apply to any contract that is awarded in accordance with subsection (a) with a person or business represented or assisted by a person who was a member of a task force or served as the designee or representative of a task force member.

§84-16 Contracts voidable. In addition to any other penalty provided by law, any contract entered into by the State in violation of this chapter is voidable on behalf of the State; provided that in any action to avoid a contract pursuant to this section the interests of third parties who may be damaged thereby shall be taken into account, and the action to void the transaction is initiated within sixty days after the determination of a violation under this chapter. The attorney general shall have the authority to enforce this provision.

§84-17 Requirements of disclosure. (a) For the purposes of this section, the terms:

"Disclosure period" refers to the period from January 1 of the preceding calendar year to the time of the filing of the employee's or legislator's disclosure of financial interests.

"Substantially the same" refers to no more than ten amendments or changes to the information reported for the preceding disclosure period.

(b) The disclosure of financial interest required by this section shall be filed:
(1) By any person enumerated in subsection (c), except a member of the legislature, between January 1 and May 31 of each year;
(2) By a member of the legislature between January 1 and January 31 of each year;
(3) Within thirty days of a person's election or appointment to a state position enumerated in subsection (c); or
(4) Within thirty days of separation from a state position if a prior financial disclosure statement for the position was not filed within the one hundred eighty days preceding the date of separation;

provided that candidates for state elective offices or the constitutional convention shall file the required statements no later than twenty days prior to the date of the primary election for state offices or the election of delegates to the constitutional convention.

(c) The following persons shall file annually with the state ethics commission a disclosure of financial interests:
(1) The governor, the lieutenant governor, the members of the legislature, and delegates to the constitutional convention; provided that delegates to the constitutional convention shall only be required to file initial disclosures;
(2) The directors and their deputies, the division chiefs, the executive directors and the executive secretaries and their deputies, the purchasing agents and the fiscal officers, regardless of the titles by which the foregoing persons are designated, of every state agency and department;
(3) The permanent employees of the legislature and its service agencies, other than persons employed in clerical, secretarial, or similar positions;
(4) The administrative director of the State, and the assistants in the office of the governor and the lieutenant governor, other than persons employed in clerical, secretarial, or similar positions;
(5) The hearings officers of every state agency and department;
(6) The president, the vice presidents, assistant vice presidents, the chancellors, and the provosts of the University of Hawaii and its community colleges;
(7) The superintendent, the deputy superintendent, the assistant superintendents, the complex area superintendents, the state librarian, and the deputy state librarian of the department of education;
(8) The administrative director and the deputy director of the courts;
(9) The members of every state board or commission whose original terms of office are for periods exceeding one year and whose functions are not solely advisory;

(10) Candidates for state elective offices, including candidates for election to the constitutional convention, provided that candidates shall only be required to file initial disclosures; and

(11) The administrator and assistant administrator of the office of Hawaiian affairs.

(d) The financial disclosure statements of the following persons shall be public records and available for inspection and duplication:

(1) The governor, the lieutenant governor, the members of the legislature, candidates for and delegates to the constitutional convention, the trustees of the office of Hawaiian affairs, and candidates for state elective offices;

(2) The directors of the state departments and their deputies, regardless of the titles by which the foregoing persons are designated; provided that with respect to the department of the attorney general, the foregoing shall apply only to the attorney general and the first deputy attorney general;

(3) The administrative director of the State;

(4) The president, the vice presidents, the assistant vice presidents, the chancellors, and the provosts of the University of Hawaii;

(5) The members of the board of education and the superintendent, the deputy superintendent, the state librarian, and the deputy state librarian of the department of education;

(6) The administrative director and the deputy director of the courts; and

(7) The administrator and the assistant administrator of the office of Hawaiian affairs.

(e) The information on the financial disclosure statements shall be confidential, except as provided in subsection (d). The commission shall not release the contents of the disclosures except as may be permitted pursuant to this chapter. Any person who releases any confidential information shall be subject to section 84-31(c).

[Note: This reference to section 84-31(c) pertains to previous statutory language which was deleted by Act 221, SLH 1995.]

(f) Candidates for state elective offices, including candidates for election to the constitutional convention, shall only be required to disclose their own financial interests. The disclosures of financial interests of all other persons designated in subsection (c) shall state, in addition to the financial interests of the person disclosing, the financial interests of the person's spouse and dependent children. All disclosures shall include:

(1) The source and amount of all income of $1,000 or more received, for services rendered, by the person in the person's own name or by any other person for the person's use or benefit during the preceding calendar year and the nature of the services rendered; provided that information that may be privileged by law or individual items of compensation that constitute a portion of the gross income of the business or profession from which the person derives income need not be disclosed;

(2) The amount and identity of every ownership or beneficial interest held during the disclosure period in any business having a value of $5,000 or more or equal to ten per cent of the ownership of the business and, if the interest was transferred during the disclosure period, the date of the transfer; provided that an interest in the form of an account in a federal or state regulated financial institution, an interest in the form of a policy in a mutual insurance company, or individual items in a mutual fund or a blind trust, if the mutual fund or blind trust has been disclosed pursuant to this paragraph, need not be disclosed;

(3) Every officership, directorship, trusteeship, or other fiduciary relationship held in a business during the disclosure period, the term of office and the annual compensation;

(4) The name of each creditor to whom the value of $3,000 or more was owed during the disclosure period and the original amount and amount outstanding; provided that debts arising out of retail installment transactions for the purchase of consumer goods need not be disclosed;

(5) The street address and, if available, the tax map key number, and the value of any real property in which the person holds an interest whose value is $10,000 or more, and, if the interest was transferred or obtained during the disclosure period, a statement of the amount and nature of the consideration received or paid in exchange for such interest, and the name of the person furnishing or receiving the consideration; provided that disclosure shall not be required of the street address and tax map key number of the person's residence;

(6) The names of clients personally represented before state agencies, except in ministerial matters, for a fee or compensation during the disclosure period and the names of the state agencies involved; and

(7) The amount and identity of every creditor interest in an insolvent business held during the disclosure period having a value of $5,000 or more.

(g) Where an amount is required to be reported, the person disclosing may indicate whether the amount is at least $1,000 but less than $10,000; at least $10,000 but less than $25,000; at least $25,000 but less than $50,000; at least $50,000 but less than $100,000; at least $100,000 but less than $150,000; at least $150,000 but less than $250,000; at least $250,000 but less than $500,000; at least $500,000 but less than $750,000; at least $750,000 but less than $1,000,000; or $1,000,000 or more. An amount of stock may be reported by number of shares.

(h) The state ethics commission shall provide a long form of disclosure on all even-numbered years and a short form of disclosure for subsequent annual filings on all odd-numbered years in those instances where the financial interests of the person disclosing are substantially the same as those reported for the preceding disclosure period.

(i) Failure of a legislator, a delegate to the constitutional convention, or employee to file a disclosure of financial interests as required by this section shall be a violation of this chapter. Any legislator, delegate to a constitutional convention, or employee who fails to file a disclosure of financial interests when due shall be assessed an administrative fine of $50. The state ethics commission shall notify a person, by registered mail, return receipt requested, of the failure to file, and the disclosure of financial interests shall be submitted to the commission not later than 4:30 p.m. on the tenth day after notification of the failure to file has been mailed to the person. If a disclosure of financial interests has not been filed within ten days of the due date, an additional administrative fine of $10 for each day a disclosure remains unfiled shall be added to the administrative fine. All administrative fines collected under this section shall be deposited in the State's general fund. Any administrative fine for late filing shall be in addition to any other action the commission may take under this chapter for violations of the state ethics code. The commission may waive any administrative fines assessed under this subsection for good cause shown.

(j) The chief election officer, upon receipt of the nomination paper of any person seeking a state elective office, including the office of delegate to the constitutional convention, shall notify the ethics commission of the name of the candidate for state office and the date on which the person filed the nomination paper. The ethics commission, upon the expiration of the time allowed for filing, shall release to the public a list of all candidates who have failed to file financial disclosure statements and shall immediately assess a late filing penalty fee against those candidates of $25 which shall be collected by the state ethics commission and deposited into the general fund. The ethics commission may investigate, initiate, or receive charges as to whether a candidate's financial disclosure statement discloses the financial interests required to be disclosed. After proceeding in conformance with section 84-31, the ethics commission may issue a decision as to whether a candidate has complied with section 84-17(f) and this decision shall be a matter of public record.

§84-17.5 Disclosure files; disposition. (a) All financial disclosure statements filed by a legislator, employee, or delegate to a constitutional convention shall be maintained by the state ethics commission during the term of office of the legislator, employee, or delegate and for a period of six years thereafter. Upon the expiration of the six-year period, the financial disclosure statement and all copies thereof shall be destroyed.

(b) Upon the expiration of six years after an election for which a candidate for state elective office or a constitutional convention has filed a financial disclosure statement, the state ethics commission shall destroy the candidate's financial disclosure statement and all copies thereof.

(c) Financial disclosure statements provided for in section 84-17(d) shall cease to be public records once the six-year period in subsection (a) or (b) has run.

(d) Nothing herein shall bar the state ethics commission from retaining a financial disclosure statement or copy of a financial disclosure statement that has become part of a charge case or advisory opinion request, or is part of an ongoing investigation.

§84-18 Restrictions on post employment. (a) No former legislator or employee shall disclose any information which by law or practice is not available to the public and which the former legislator or employee acquired in the course of the former legislator's or employee's official duties or use the information for the former legislator's or employee's personal gain or the benefit of anyone.

(b) No former legislator, within twelve months after termination of the former legislator's employment, shall represent any person or business for a fee or other consideration, on matters in which the former legislator participated as a legislator or on matters involving official action by the legislature.

(c) No former employee, within twelve months after termination of the former employee's employment, shall represent any person or business for a fee or other consideration, on matters in which the former employee participated as an employee or on matters involving official action by the particular state agency or subdivision thereof with which the former employee had actually served. This section shall not apply to a former task force member who, but for service as a task force member, would not be considered an employee.

(d) This section shall not prohibit any agency from contracting with a former legislator or employee to act on a matter on behalf of the State within the period of limitations stated herein, and shall not prevent such legislator or employee from appearing before any agency in relation to such employment.

(e) This section shall not apply to any person who is employed by the State for a period of less than one hundred and eighty-one days.

(f) For the purposes of this section, "represent" means to engage in direct communication on behalf of any person or business with a legislator, a legislative employee, a particular state agency or subdivision thereof, or their employees.

§84-19 Violation. (a) Any favorable state action obtained in violation of the code of ethics for legislators or employees and former employees is voidable in the same manner as voidable contracts as provided for under section 84-16; and the State by the attorney general may pursue all legal and equitable remedies available to it.

(b) The State by the attorney general may recover any fee, compensation, gift, or profit received by any person as a result of a violation of the code of ethics by a legislator or employee or former legislator or employee. Action to recover under this subsection shall be brought within one year of a determination of such violation.

(c) Any violation of this chapter by an employee, candidate for election to and elected delegate to the constitutional convention shall be punishable only in accordance with the code of ethics adopted by the constitutional convention.

Part III. State Ethics Commission

§84-21 State ethics commission established; composition. (a) There is established within the office of the auditor for administrative purposes only a commission to be known as the state ethics commission. The commission shall consist of five members appointed by the governor from a panel of ten persons nominated by the judicial council. Each member of the commission shall be a citizen of the United States and a resident of the State. Members of the commission shall hold no other public office.

(b) The chairperson of the commission shall be elected by the majority of the members of the commission. The term of each member of the commission shall be for four years. No person shall be appointed consecutively to more than two terms as a member of the commission. A vacancy on the commission shall be filled for the remainder of the unexpired term in the same manner as the original appointment, except that the judicial council shall nominate for gubernatorial appointment two persons for a vacancy.

(c) No member of the commission shall hold office for more than one hundred and twenty days after the expiration of the member's term. If the governor fails to appoint a person to a vacant office within sixty days after receipt of the list of nominees from the judicial council, council shall select a person from its list of nominees to fill the vacant office, notwithstanding subsection (b) and section 26-34 to the contrary.

(d) The governor may remove or suspend any member of the commission upon the filing of a written finding with the commission, and upon service of a copy of the written finding on the member to be removed or suspended.

Part IV. Administration and Enforcement

§84-31 Duties of commission; complaint, hearing, determination. (a) The ethics commission shall have the following powers and duties:

(1) It shall prescribe forms for the disclosures required by Article XIV of the Hawaii Constitution and section 84-17 and the gifts disclosure statements required by section 84-11.5 and shall establish orderly procedures for implementing the requirements of those provisions;

(2) It shall render advisory opinions upon the request of any legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the code of ethics. If no advisory opinion is rendered within thirty days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the code of ethics. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the legislator, employee, or delegate to the constitutional

convention, or person formerly holding such office or employment, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by such persons in the request for an advisory opinion;

(3) It shall initiate, receive, and consider charges concerning alleged violation of this chapter, initiate or make investigation, and hold hearings;

(4) It may subpoena witnesses, administer oaths, and take testimony relating to matters before the commission and require the production for examination of any books or papers relative to any matter under investigation or in question before the commission. Before the commission shall exercise any of the powers authorized in this section with respect to any investigation or hearings it shall by formal resolution, supported by a vote of three or more members of the commission, define the nature and scope of its inquiry;

(5) It may, from time to time adopt, amend, and repeal any rules, not inconsistent with this chapter, that in the judgment of the commission seem appropriate for the carrying out of this chapter and for the efficient administration thereof, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission. The rules, when adopted as provided in chapter 91, shall have the force and effect of law;

(6) It shall have jurisdiction for purposes of investigation and taking appropriate action on alleged violations of this chapter in all proceedings commenced within six years of an alleged violation of this chapter by a legislator or employee or former legislator or employee. A proceeding shall be deemed commenced by the filing of a charge with the commission or by the signing of a charge by three or more members of the commission. Nothing herein shall bar proceedings against a person who by fraud or other device, prevents discovery of a violation of this chapter;

(7) It shall distribute its publications without cost to the public and shall initiate and maintain programs with the purpose of educating the citizenry and all legislators, delegates to the constitutional convention, and employees on matters of ethics in government employment; and

(8) It shall administer any code of ethics adopted by a state constitutional convention, subject to the procedural requirements of this part and any rules adopted thereunder.

(b) Charges concerning the violation of this chapter shall be in writing, signed by the person making the charge under oath, except that any charge initiated by the commission shall be signed by three or more members of the commission. The commission shall notify in writing every person against whom a charge is received and afford the person an opportunity to explain the conduct alleged to be in violation of the chapter. The commission may investigate, after compliance with this section, such charges and render an informal advisory opinion to the alleged violator. The commission shall investigate all charges on a confidential basis, having available all the powers herein provided, and proceedings at this stage shall not be public. If the informal advisory opinion indicates a probable violation, the person charged shall request a formal opinion or within a reasonable time comply with the informal advisory opinion. If the person charged fails to comply with such informal advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter might have occurred, a copy of the charge and a further statement of the alleged violation shall be personally served upon the alleged violator. Service shall be made by personal service upon the alleged violator wherever found or by registered or certified mail with request for a return receipt and marked deliver to addressee only. If after due diligence service cannot be effected successfully in accordance with the above, service may be made by publication if so ordered by the circuit court of the circuit wherein the alleged violator last resided. The state ethics commission shall submit to the circuit court for its consideration in issuing its order to allow service by publication an affidavit setting forth facts based upon the personal knowledge of the affiant concerning the methods, means, and attempts made to locate and effect service by personal service or by registered or certified mail in accordance with the above. Service by publication when ordered by the court shall be made by publication once a week for four successive weeks of a notice in a newspaper of general

circulation in the circuit of the alleged violator's last known state address. The alleged violator shall have twenty days after service thereof to respond in writing to the charge and statement.

(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 or of the code of ethics adopted by the constitutional convention has been committed, then the commission shall set a time and place for a hearing, giving notice to the complainant and the alleged violator. 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 (1) to be heard, (2) to subpoena witnesses and require the production of any books or papers relative to the proceedings, (3) to be represented by counsel and (4) to 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 must be based upon competent and substantial evidence. All testimony and other evidence taken at the hearing shall be recorded. Copies of transcripts of such record shall be available only to the complainant and the alleged violator at their own expense, and the fees therefor shall be deposited in the State's general fund.

(d) A decision of the commission pertaining to the conduct of any legislator, delegate to the constitutional convention, or employee or person formerly holding such office or employment shall be in writing and signed by three or more of the members of the commission. A decision of the commission rendered after a hearing together with findings and the record of the proceeding shall be a public record.

(e) A person who files a frivolous charge with the commission against any person covered by this chapter shall be civilly liable to the person charged for all costs incurred in defending the charge, including but not limited to costs and attorneys' fees. In any case where the commission decides not to issue a complaint in response to a charge, the commission shall upon the written request of the person charged make a finding as to whether or not the charge was frivolous. The person charged may initiate an action in the circuit court for recovery of fees and costs incurred in commission proceedings within one year after the commission renders a decision. The commission's decision shall be binding upon the court for purposes of a finding pursuant to section 607-14.5.

(f) The commission shall cause to be published yearly summaries of decisions, advisory opinions, and informal advisory opinions. The commission shall make sufficient deletions in the summaries to prevent disclosing the identity of persons involved in the decisions or opinions where the identity of such persons is not otherwise a matter of public record under this chapter.

§84-31.3 Filing of false charges. (a) Any person who knowingly and intentionally files a false charge with the commission, or any member of the commission who initiates action against any state official, state employee, or any other person covered by this chapter, knowing such charge to be false, shall be guilty of the crime of perjury and subject to the penalty set forth in section 710-1060.

(b) Whoever is convicted in a court of competent jurisdiction of the crime of perjury under this section, in addition to any other punishment prescribed by law thereof, shall be required by court order to reimburse the person against whom the false charge was filed for all of the person's legal expenses and any other expenses incurred in relation to the person's defense against the false complaint.

(c) If such charge is filed within six months prior to an election in which the accused's name appears on the ballot, the person filing the false complaint shall pay to the accused the amount set out above plus an equal amount to the general fund of the State.

(d) This section shall not supersede or preclude any other right or remedy at law available to the person falsely accused.

§84-32 Procedure. (a) With respect to legislators and employees removable only by impeachment: when the ethics commission after due hearings pursuant to section 84-31(c) determines that there is sufficient cause to file a complaint against a legislator or an employee removable only by impeachment, it shall issue a complaint and refer the matter to the appropriate body of the legislature. The complaint shall contain a statement of the facts alleged to constitute the violation. The complaint shall be a matter of public record. The legislature shall take appropriate disciplinary action unless it determines that disciplinary action is not warranted and, within thirty days of the referral of the complaint, shall notify the commission of the action taken. Days during which the legislature is not in session shall not be included in determining the thirty-day period. Any disciplinary action taken by the legislature, or the fact that no disciplinary action is taken, shall be a matter of public record.

(b) With respect to employees other than legislators and employees removable only by impeachment: when the commission determines after due hearing pursuant to section 84-31(c) that there is sufficient cause to file a complaint against an employee other than a legislator, or an employee removable only by impeachment, it shall issue a complaint and refer the matter to the governor who shall take appropriate disciplinary action unless the governor determines that disciplinary action is not warranted. The governor shall notify the commission of the disciplinary action taken or the fact that no disciplinary action was taken, within sixty days of the referral of the complaint. The complaint and any disciplinary action taken, or the fact that no disciplinary action is taken, shall be a matter of public record.

(c) With respect to former employees and former legislators, when the commission determines after due hearing pursuant to section 84-31(c) that there is sufficient cause to file a complaint against a former employee or former legislator, it shall issue a complaint and refer the matter to the attorney general who may exercise whatever legal or equitable remedies which may be available to the State. The complaint shall be a matter of public record.

(d) With respect to delegates to the constitutional convention removable only by impeachment: when the ethics commission after due hearing pursuant to section 84-31(c) determines that there is sufficient cause to file a complaint against a delegate to the constitutional convention, it shall issue a complaint and refer the matter to the appropriate body of the constitutional convention. The complaint shall be a matter of public record. The appropriate body of the constitutional convention shall take appropriate disciplinary action unless it determines that disciplinary action is not warranted and, within thirty days of the referral of the complaint, shall notify the commission of the action taken. Days during which the constitutional convention is not in session shall not be included in determining the thirty-day period. Any disciplinary action taken by the constitutional convention, or the fact that no disciplinary action is taken, shall be a matter of public record.

§84-33 Disciplinary action for violation. In addition to any other powers the civil service commission or other authority may have to discipline employees, the civil service commission or authority may reprimand, put on probation, demote, suspend, or discharge an employee found to have violated the code of ethics.

§84-34 No compensation. The members of the ethics commission shall serve without compensation but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

§84-35 Staff. The ethics commission may employ and at pleasure remove such persons, including an executive director, as it may deem necessary for the performance of its functions. Effective July 1, 2005, the salary of the executive director shall be the same as the salary of the director of health. The commission shall fix the compensations of its employees within the amounts made available by appropriation therefor. The employees of the commission shall be exempt from chapter 76.

§84-35.5 Prohibition from political activity. The members of the ethics commission and its staff shall not take an active part in political management or in political campaigns during the term of office or employment.

§84-36 Cooperation. The ethics commission may request and shall receive from every department, division, board, bureau, commission, or other agency of the state cooperation and assistance in the performance of its duties.

§84-37 Concurrent jurisdiction. Notwithstanding any provision contained herein, pursuant to Article III, section 12 of the Constitution of the State of Hawaii each house of the legislature may prescribe further rules of conduct covering its members and may investigate and discipline a member for any violation of its rules or the code of ethics.

§84-38 Judicial branch. The powers and duties assigned in this part IV to the governor shall, with respect to employees in the judicial branch, be assigned to the chief justice of the supreme court.

§84-39 Administrative fines. (a) Where an administrative fine has not been established for a violation of a provision of this chapter, any person, including a legislator or employee, who violates a provision of this chapter shall be subject to an administrative fine imposed by the ethics commission that shall not exceed $500 for each violation. All fines collected under this section shall be deposited in the general fund.

(b) No fine shall be assessed under this section unless:
(1) The commission convenes a hearing in accordance with section 84-31(c) and chapter 91; and
(2) A decision has been rendered by the commission.

Part V. Mandatory Ethics Training

§84-41 Applicability of part. This part applies to legislators, members of the board of education, trustees of the office of Hawaiian affairs, the governor, the lieutenant governor, and executive department heads and deputies. This part does not apply to any other officer or employee of the State.

§84-42 Mandatory ethics training course. All state officers and employees enumerated in section 84-41 shall complete an ethics training course administered by the state ethics commission as provided in this part. For the purposes of this part, “ethics training” includes education and training in:
(1) The ethics laws set forth in this chapter; and
(2) The lobbying laws set forth in chapter 97.

§84-43 Ethics training course. (a) The state ethics commission shall establish, design, supervise, and conduct ethics training designed specifically for the officers and employees to whom this part applies.

(b) The ethics training course shall include:
(1) Explanations and discussions of the ethics laws, administrative rules, and relevant internal policies;
(2) Specific technical and legal requirements;
(3) The underlying purposes and principles of ethics laws;
(4) Examples of practical application of the laws and principles; and
(5) A question-and-answer participatory segment regarding common problems and situations.

The state ethics commission shall develop the methods and prepare any materials necessary to implement the course.

(c) The state ethics commission shall:
(1) Administer the ethics training course;
(2) Designate those of its legal staff who are to conduct the ethics training course; and
(3) Notify each officer or employee enumerated in section 84-41 that their attendance in this course is mandatory.

(d) The ethics training course shall be held in January of each year for those who have not attended the course previously. The course shall last at least two hours in length.

(e) The state ethics commission may repeat the course as necessary to accommodate all persons who are required to attend.

(f) Each state agency shall provide to the state ethics commission the names of those required to take the course in a timely manner and assist the commission by providing adequate meeting facilities for the ethics training course.

[This revision of the code of ethics is unofficial and for convenience only. Consult Hawaii Revised Statutes for the official codification of this law.]

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