
A BILL FOR AN ACT

RELATING TO CAMPAIGN FINANCE.

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

1 SECTION 1. The legislature finds that the State has a
2 compelling interest in securing its democratic self-governance
3 from foreign influence. The State welcomes immigrants,
4 visitors, and investors from around the world; however, its
5 elections should be decided by the people of Hawaii and not by
6 foreign entities.

7 The legislature further finds that the United States
8 government has concluded that Russia, China, Iran, and other
9 foreign actors are engaged in ongoing campaigns to undermine
10 democratic institutions, as set forth in the joint statement
11 "Combating Foreign Influence in United States Elections", issued
12 by the Office of the Director of National Intelligence, United
13 States Department of Justice, Federal Bureau of Investigation
14 (FBI), and United States Department of Homeland Security on
15 October 19, 2018. The FBI has concluded that foreign-influenced
16 activities include "criminal efforts to suppress voting and
17 provide illegal campaign financing," as set forth in FBI



1 Director Christopher Wray's press briefing on election security
2 on August 2, 2018.

3 The legislature also finds that the United States Congress
4 and the United States Supreme Court recognize the need to
5 protect American elections from foreign influence through the
6 ban on contributions and expenditures by foreign nationals
7 imposed by title 52 United States Code section 30121, upheld by
8 the Supreme Court in *Bluman v. Federal Election Commission*,
9 800 F.Supp.2d 281 (D.D.C. 2011), affirmed, 565 U.S. 1104 (2012).
10 Several states, including Hawaii, have enacted similar laws that
11 ban foreign nationals from making contributions or expenditures
12 in connection with state or local elections.

13 The legislature further finds that former President Barack
14 Obama warned of foreign corporate spending in state elections.
15 Political spending by foreign entities can weaken, interfere
16 with, or disrupt a state's democratic self-government and the
17 trust that the electorate has in its elected representatives.
18 In Hawaii, both foreign nationals and foreign corporations are
19 prohibited from making contributions or expenditures to or on
20 behalf of a candidate, candidate committee, or noncandidate
21 committee. However, more can be done to protect the integrity



1 of Hawaii's democratic self-government from foreign entities
2 that seek to influence Hawaii's elections through political
3 spending.

4 The purpose of this Act is to protect the State's
5 democratic self-governance by:

6 (1) Amending the prohibition against campaign finance
7 contributions and expenditures by foreign nationals
8 and foreign corporations;

9 (2) Requiring every business entity that contributes or
10 expends funds in an election to file a statement of
11 certification regarding its status as a foreign
12 corporation; and

13 (3) Requiring noncandidate committees making only
14 independent expenditures to obtain a statement of
15 certification from each top contributor required to be
16 listed in an advertisement.

17 SECTION 2. Section 11-302, Hawaii Revised Statutes, is
18 amended by adding one new definition to be appropriately
19 inserted and to read as follows:

20 "Business entity" means a for-profit corporation, company,
21 limited liability company, limited partnership, business trust,



1 business association, or other similar for-profit business
2 entity."

3 SECTION 3. Section 11-356, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~[+]§11-356[+]~~ **Contributions and expenditures by a foreign**
6 **national or foreign corporation; prohibited.** (a) ~~[Except as~~
7 ~~provided in subsection (b), no]~~ No contributions or expenditures
8 shall be made to or on behalf of a candidate, candidate
9 committee, or noncandidate committee~~[,]~~ by a foreign national or
10 foreign corporation, including a domestic subsidiary of a
11 foreign corporation, [a] domestic corporation that is owned by a
12 foreign national, or [a] local subsidiary where administrative
13 control is retained by the foreign corporation~~[, and in the same~~
14 ~~manner prohibited under 2 United States Code section 441e and 11~~
15 ~~Code of Federal Regulations section 110.20, as amended.~~

16 ~~(b) A foreign-owned domestic corporation may make~~
17 ~~contributions if:~~

18 ~~(1) Foreign national individuals do not participate in~~
19 ~~election-related activities, including decisions~~
20 ~~concerning contributions or the administration of a~~
21 ~~candidate committee or noncandidate committee; or~~



1 ~~(2) The contributions are domestically derived].~~

2 (b) No independent expenditures or electioneering
3 communications shall be made by a foreign national or foreign
4 corporation.

5 (c) No contribution or donation shall be made to any
6 person by a foreign national or foreign corporation if the
7 contribution or donation is earmarked for the recipient to make
8 a campaign finance contribution or expenditure, including
9 independent expenditure or electioneering communication.

10 (d) Every business entity that contributes to or makes an
11 expenditure on behalf of a candidate, candidate committee, or
12 noncandidate committee, including an independent expenditure or
13 electioneering communication, shall, within seven business days
14 after making the contribution or expenditure, file with the
15 commission a statement of certification signed by the business
16 entity's chief executive officer avowing under penalty of
17 perjury that, after due inquiry, the business entity was not a
18 foreign corporation on the date the contribution or expenditure
19 was made. For purposes of this certification, the business
20 entity shall ascertain beneficial ownership in a manner
21 consistent with the Hawaii Business Corporation Act or, if it is



1 registered on a national securities exchange, as set forth in
2 title 17 Code of Federal Regulations sections 240.13d-3 and
3 240.13d-5. The business entity shall provide a copy of the
4 statement of certification to any candidate or committee to
5 which it contributes and, upon request of the recipient, to any
6 other person to which it contributes.

7 (e) For the purposes of this section:

8 "Chief executive officer" means the highest-ranking officer
9 or individual having authority to make decisions regarding a
10 business entity's affairs.

11 "Earmarked" means a designation or instruction, whether
12 direct or indirect, express or implied, oral or written, that
13 results in all or any part of the contribution or donation being
14 expended in a manner that would be prohibited by this section if
15 made by the foreign national or foreign corporation."

16 SECTION 4. Section 11-393, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§11-393 Identification of certain top contributors to**
19 **noncandidate committees making only independent expenditures.**

20 (a) An advertisement shall contain an additional notice in a
21 prominent location immediately after or below the notices



1 required by section 11-391, if the advertisement is broadcast,
2 televised, circulated, or published, including by electronic
3 means, and is paid for by a noncandidate committee that
4 certifies to the commission that it makes only independent
5 expenditures. This additional notice shall start with the
6 words, "The three top contributors for this advertisement are",
7 followed by the names of the three top contributors [~~as defined~~
8 ~~in subsection (e),~~] who made the highest aggregate contributions
9 to the noncandidate committee for the purpose of funding the
10 advertisement; provided that:

- 11 (1) If a noncandidate committee is only able to identify
12 two top contributors who made contributions for the
13 purpose of funding the advertisement, the additional
14 notice shall start with the words, "The two top
15 contributors for this advertisement are", followed by
16 the names of the two top contributors;
- 17 (2) If a noncandidate committee is able to identify only
18 one top contributor who made contributions for the
19 purpose of funding the advertisement, the additional
20 notice shall start with the words, "The top



1 contributor for this advertisement is", followed by
2 the name of the top contributor;

3 (3) If a noncandidate committee is unable to identify any
4 top contributors who made contributions for the
5 purpose of funding the advertisement, the additional
6 notice shall start with the words, "The three top
7 contributors for this noncandidate committee are",
8 followed by the names of the three top contributors
9 who made the highest aggregate contributions to the
10 noncandidate committee; and

11 (4) If there are no top contributors to the noncandidate
12 committee, the noncandidate committee shall not be
13 subject to this section.

14 In no case shall a noncandidate committee be required to
15 identify more than three top contributors pursuant to this
16 section.

17 (b) If a noncandidate committee has more than three top
18 contributors who contributed in equal amounts, the noncandidate
19 committee may select which of the top contributors to identify
20 in the advertisement; provided that the top contributors not
21 identified in the advertisement did not make a higher aggregate



1 contribution than those top contributors who are identified in
2 the advertisement. The additional notice required for
3 noncandidate committees described under this subsection shall
4 start with the words "Three of the top contributors for this
5 advertisement are" or "Three of the top contributors to this
6 noncandidate committee are", as appropriate, followed by the
7 names of the three top contributors.

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

19 (d) A noncandidate committee shall obtain a statement of
20 certification from each top contributor required to be listed in
21 an advertisement pursuant to this section avowing under penalty



1 of perjury that, after due inquiry, none of the funds
2 contributed by the top contributor were derived from a foreign
3 corporation. If a noncandidate committee does not receive a
4 statement of certification from a top contributor, the
5 advertisement shall include the following statement: "Some of
6 the funds used to pay for this message may have been provided by
7 foreign corporation". A noncandidate committee may rely on a
8 statement of certification provided by a top contributor unless
9 the noncandidate committee has actual knowledge that the
10 statement of certification is false.

11 [~~d~~] (e) Any noncandidate committee that violates this
12 section shall be subject to a minimum fine of \$1,000 per
13 violation.

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

18 SECTION 5. Nothing in this Act shall be construed to
19 diminish or infringe upon any right protected under the First
20 Amendment of the Constitution of the United States or conflict
21 with any federal statute or regulation.



1 SECTION 6. If any provision of this Act, or the
2 application thereof to any person or circumstance, is held
3 invalid, the invalidity does not affect other provisions or
4 applications of the Act that can be given effect without the
5 invalid provision or application, and to this end the provisions
6 of this Act are severable.

7 SECTION 7. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

10 SECTION 8. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 9. This Act shall take effect on January 1, 3000.



Report Title:

Campaign Finance; Foreign Corporations; Foreign Nationals

Description:

Amends the prohibition against foreign nationals and foreign corporations making campaign finance contributions and expenditures. Requires every business entity that contributes or expends funds in a state election to file a statement of certification regarding its limited foreign influence. Requires noncandidate committees making only independent expenditures to obtain a statement of certification from each top contributor required to be listed in an advertisement. Effective 1/1/3000.
(HD1)

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