
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.

4 The legislature further finds that former President Barack
5 Obama warned of foreign corporate spending in state elections
6 and that Ellen Weintraub, commissioner of the Federal Election
7 Commission, and Ann Ravel, former commissioner of the Federal
8 Election Commission, specifically called on states to enact
9 legislation to limit the influence of foreign corporate spending
10 on American elections.

11 The legislature recognizes that Seattle, Washington, has
12 enacted legislation, and the United States Congress and several
13 states and municipalities, including Colorado, Maine,
14 Massachusetts, Minnesota, the State of New York, and the city of
15 New York are considering enacting legislation to limit foreign-
16 influenced corporate political spending and to protect the
17 integrity of their elections from foreign corporate influence.



1 Accordingly, the purpose of this Act is to protect the
2 State's democratic self-governance by:

3 (1) Prohibiting foreign entities and foreign-influenced
4 corporations from making independent expenditures,
5 electioneering communications, or contributions to
6 candidates or committees;

7 (2) Requiring every corporation that contributes or
8 expends funds in a state election to file a statement
9 of certification regarding its status as a foreign-
10 influenced corporation;

11 (3) Requiring every entity that expends funds in a state
12 election and receives contributions or donations from
13 a corporation to ensure that funds derived from
14 foreign-influenced corporations are not used for
15 political spending; and

16 (4) Requiring noncandidate committees making only
17 independent expenditures to obtain a statement of
18 certification from each top contributor required to be
19 listed in an advertisement.



1 SECTION 2. Section 11-302, Hawaii Revised Statutes, is
2 amended by adding five new definitions to be appropriately
3 inserted and to read as follows:

4 "Chief executive officer" means the highest-ranking
5 officer or individual having authority to make decisions
6 regarding a corporation's affairs.

7 "Foreign-influenced corporation" means a corporation that
8 meets at least one of the following conditions:

- 9 (1) A single foreign owner holds, owns, controls, or
10 otherwise has direct or indirect beneficial ownership
11 of five per cent or more of the total equity,
12 outstanding voting shares, membership units, or other
13 applicable ownership interests of the corporation;
14 (2) A foreign owner participates directly or indirectly in
15 the corporation's decision-making process with respect
16 to the corporation's political activities in the
17 United States;
18 (3) The corporation is incorporated or otherwise formed
19 pursuant to the laws of a foreign country; or
20 (4) The principal place of business of the corporation is
21 in a foreign country.



1 "Foreign investor" means a person or entity that:

2 (1) Holds, owns, controls, or otherwise has direct or
3 indirect beneficial ownership of equity, outstanding
4 voting shares, membership units, or other applicable
5 ownership interests of a corporation; and

6 (2) Is:

7 (A) A government of a foreign country; a foreign
8 political party; or a partnership, association,
9 corporation, organization; or other combination
10 of persons organized under the laws of or having
11 its principal place of business in a foreign
12 country; or

13 (B) A foreign national.

14 "Foreign national" means an individual who is not a citizen
15 of the United States or a national of the United States and who
16 is not lawfully admitted for permanent residence.

17 "Foreign owner" means:

18 (1) A foreign investor; or

19 (2) A corporation wherein a foreign investor holds, owns,
20 controls, or otherwise has directly or indirectly
21 acquired a beneficial ownership of equity or voting



1 shares in an amount that is equal to or greater than
2 fifty per cent of the total equity or outstanding
3 voting shares."

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

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

19 ~~(b) A foreign owned domestic corporation may make~~
20 ~~contributions if:~~



1 ~~(1) Foreign national individuals do not participate in~~
2 ~~election related activities, including decisions~~
3 ~~concerning contributions or the administration of a~~
4 ~~candidate committee or noncandidate committee; or~~

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

6 (b) No independent expenditures or electioneering
7 communications shall be made by a foreign national or foreign-
8 influenced corporation.

9 (c) Every corporation that contributes to or makes an
10 expenditure on behalf of a candidate, candidate committee, or
11 noncandidate committee, including an independent expenditure or
12 electioneering communication, shall within seven business days
13 after making the contribution or expenditure file with the
14 campaign spending commission a statement of certification signed
15 by the corporation's chief executive officer avowing under
16 penalty of perjury that, after due inquiry, the corporation was
17 not a foreign-influenced corporation on the date the
18 expenditure, independent expenditure, contribution, or
19 expenditure for an electioneering communication was made. For
20 purposes of this certification, the corporation shall ascertain
21 beneficial ownership in a manner consistent with chapter 414,



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

7 (d) A person that receives a contribution or donation from
8 a corporation may not use that contribution or donation,
9 directly or indirectly, to make an expenditure, including an
10 independent expenditure or an expenditure for an electioneering
11 communication, on behalf of a candidate, candidate committee, or
12 noncandidate committee, or contribute, donate, transfer, or
13 convey funds from the contribution or donation to another person
14 to make an expenditure, including an independent expenditure or
15 an expenditure for an electioneering communication, on behalf of
16 a candidate, candidate committee, or noncandidate committee,
17 unless:

18 (1) The person received from the corporation a copy of the
19 statement of certification described in subsection
20 (c);



- 1 (2) The person does not have actual knowledge that the
2 statement of certification is false;
- 3 (3) The person separately designates, records, and
4 accounts for those funds, and ensures that
5 disbursements for expenditures, including independent
6 expenditures or expenditures for electioneering
7 communications, on behalf of a candidate, candidate
8 committee, or noncandidate committee are only made
9 from funds that comply with this section; and
- 10 (4) The person's use of the funds is otherwise lawful.
- 11 (e) For the purposes of this section:
12 "Corporation" means a for-profit corporation, company,
13 limited liability company, limited partnership, business trust,
14 business association, or other legal entity.

15 "Electioneering communication" has the same meaning as
16 defined by section 11-341."

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

19 " [†] §11-393 [†] Identification of certain top contributors
20 to noncandidate committees making only independent expenditures.

21 (a) An advertisement shall contain an additional notice in a



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

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

18 (2) If a noncandidate committee is able to identify only
19 one top contributor who made contributions for the
20 purpose of funding the advertisement, the additional
21 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 from each top
20 contributor required to be listed in an advertisement pursuant
21 to this section a statement of certification avowing under



1 penalty of perjury that, after due inquiry, none of the funds
2 contributed by the top contributor were derived from a foreign-
3 influenced corporation. If a noncandidate committee does not
4 receive a 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-influenced corporations." A noncandidate committee
8 shall be entitled to rely on a statement of certification
9 provided by a top contributor unless the noncandidate committee
10 has actual knowledge that the statement of certification is
11 false.

12 [~~(d)~~] (e) Any noncandidate committee that violates this
13 section shall be subject to a fine under section 11-410.

14 [~~(e)~~] (f) For purposes of this part, "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 prior to 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. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 7. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

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 upon its approval.



Report Title:

Campaign Finance; Foreign-Influenced Corporations; Foreign Nationals

Description:

Prohibits foreign nationals and foreign-influenced corporations from making independent expenditures, electioneering communications, or contributions to candidates or committees. Requires every corporation that contributes or expends funds in a state election to file a statement of certification regarding foreign influence. Requires recipients of corporate donations from expending funds for certain purposes unless the contributing corporation has certified that the corporation is not foreign-influenced. Requires noncandidate committees making only independent expenditures to obtain a statement of certification from each top contributor required to be listed in an advertisement. (Proposed SD1)

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