

JAN 26 2022

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 founders of the
2 United States added the First Amendment to the federal
3 Constitution to ensure that "we the people" have the information
4 necessary to engage in robust debate when choosing elected
5 representatives and to hold those representatives' integrity
6 intact once they are in office. To ensure that our democracy
7 lives up to the promise of self-government, voters must have the
8 information they need to evaluate candidates for public office
9 and to keep them accountable after they are elected. Voters
10 must also have the information they need to evaluate campaigns
11 for and against local ballot measures, for which the voters
12 themselves are acting as legislators.

13 The legislature recognizes, however, that when wealthy
14 special interests amplify their voices with their vast resources
15 to elect the candidates of their choice and hide their campaign
16 activities behind shell corporations and other organizations,
17 they muffle the voices of everyday people, and the promise of



1 the First Amendment is gone. Unfortunately, ever since the
2 Supreme Court of the United States issued its 2010 decision in
3 Citizens United v. Federal Election Commission, the door to
4 unlimited corporate campaign spending has remained wide open and
5 the use of "dark money" to pay for campaign advertisements has
6 increased dramatically, leaving the public without critical
7 information about who is spending enormous sums of money to
8 influence their votes.

9 The legislature notes that under existing law, when honest
10 people or corporations purchase campaign advertising, they must
11 insert their own name on their advertisements. However, when
12 wealthy special interests transfer their money to other entities
13 that purchase the advertisements, those special interests can
14 usually avoid disclosing their activities and deprive the public
15 of knowledge regarding who is actually attempting to influence
16 their votes. The legislature therefore finds that it is
17 necessary to stop these deceptive practices. Although the State
18 may not impose limits on how much parties may spend on
19 independent campaign efforts, the State does have the authority
20 to require disclosures that facilitate transparency, strengthen
21 enforcement efforts to ensure compliance with campaign finance



1 laws, and give voters information they need to make informed
2 choices.

3 Accordingly, the purpose of this Act is to:

4 (1) Require certain covered persons to maintain transfer
5 records of identity of the persons who directly or
6 indirectly contributed or transferred original funds
7 used for independent campaign spending, the amounts of
8 those contributions or transfers, and how those funds
9 are disbursed;

10 (2) Require certain covered persons to:

11 (A) Disclose to contributors that contributions may
12 be used or transferred for independent campaign
13 spending; and

14 (B) Provide contributors the option of excluding
15 contributed funds from any use or transfer for
16 independent campaign spending;

17 (3) Require major contributors to certain covered persons
18 to:

19 (A) Disclose to the covered persons the identities of
20 certain other contributors; and



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(B) Maintain relevant records that may be accessed by the campaign spending commission;

(4) Require certain covered persons to file with the campaign spending commission disclosure reports of certain levels of campaign-related spending and contributions;

(5) Facilitate the identification of certain top contributors of funds for certain political advertisements; and

(6) Prohibit transactions that are structured to evade the foregoing requirements.

SECTION 2. Chapter 11, Hawaii Revised Statutes, is amended by adding a new subpart to part XIII to be appropriately designated and to read as follows:

" . Disclosures in Independent Campaign Spending

§11-A Definitions. As used in this subpart, unless the context requires otherwise:

"Business income" means:

(1) Funds received by a person in commercial transactions in the ordinary course of the person's regular trade, business, or investments; or



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(2) Membership or union dues to the extent that they do not exceed \$5,000 from any person in a calendar year.

"Covered person" means any person that spends at least \$10,000 in any two-year election period on independent campaign spending, or that accepts at least \$10,000 in any two-year election period in in-kind contributions to enable independent campaign spending.

"Covered person" does not include:

(1) Any individual who spends only the individual's own personal funds for independent campaign spending;

(2) Any person that spends only the person's own business income for independent campaign spending; and

(3) Any:

(A) Candidate;

(B) Candidate committee; or

(C) Noncandidate committee that receives no more than \$2,000 in contributions from any one person in any calendar year.

"Donate" means to make a donation.



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1 "Donation" means a monetary gift that is given without
2 receiving or expecting to receive anything of equal value in
3 return.

4 "Donation" does not include a contribution as defined in
5 section 11-302.

6 "Donor" means a person who has donated to another person.

7 "General treasury" means any funds that are not traceable
8 funds.

9 "Identity" means:

10 (1) In the case of an individual, the name, mailing
11 address, occupation, and employer of the individual;
12 or

13 (2) In the case of a person other than an individual, the
14 full name; address; federal tax status; and state in
15 which the person is registered as a partnership,
16 incorporated, or organized as a limited liability
17 company, if applicable.

18 "Independent campaign spending" means:

19 (1) Any independent expenditure for a public
20 communication; or



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1 (2) Any disbursement of funds to finance the following,
2 without any express or implied agreement with, or any
3 general or particular understanding with, or pursuant
4 to any request by or communication with a candidate or
5 candidate committee:

6 (A) Any public communication that:

7 (i) Promotes, supports, attacks, or opposes a
8 candidate, regardless of whether the
9 communication expressly advocates the
10 election or defeat of the candidate;

11 (ii) Refers to a clearly identified candidate at
12 any time beginning one hundred twenty days
13 before a primary or initial special election
14 through the general or special election, and
15 is disseminated in the jurisdiction where
16 the candidate's election is taking place,
17 regardless of whether the communication
18 expressly advocates the election or defeat
19 of the candidate;

20 (iii) Promotes, supports, attacks, or opposes the
21 placement of, or approval of, a ballot



1 question, initiative, or measure before the
2 voters of any local jurisdiction, regardless
3 of whether the communication expressly
4 advocates for or against the placement or
5 approval;

6 (B) Any partisan voter activity, partisan voter
7 registration, partisan get-out-the-vote activity,
8 or other partisan campaign-related activity; or

9 (C) Research, design, production, polling, data
10 analytics, mailing or social media list
11 acquisition, or other actions or activities
12 conducted in preparation for or conjunction with
13 activities described in this definition.

14 "Independent campaign spending" does not include any
15 disbursement of funds to finance coordinated activity as defined
16 in section 11-363.

17 "Original funds" means the business income of a person or
18 the personal funds of an individual.

19 "Personal funds" means:

20 (1) Any asset over which an individual had legal control
21 and rightful title at the time the individual engaged



1 in independent campaign spending or transferred funds
2 to another person for that spending;

3 (2) Income received by an individual, including:

4 (A) Any salary or other earned income from bona fide
5 employment;

6 (B) Dividends and proceeds from the individual's
7 personal investments; and

8 (C) Bequests to the individual, including income from
9 trusts established by bequests; and

10 (3) Of the assets that are jointly owned by the individual
11 and the individual's spouse, the portion that is:

12 (A) Equal to the individual's share of the asset
13 under the instrument of conveyance or ownership;
14 or

15 (B) The value of one-half of the property, if no
16 specific share is indicated by an instrument of
17 conveyance or ownership.

18 "Personal funds" does not include any asset or income
19 received from any person for the purpose of influencing any
20 election.



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1 "Public communication" means any communication to the
2 general public through broadcast, cable, satellite, the internet
3 or other digital means, a newspaper, a magazine, an outdoor
4 advertising facility, mass mailing, telephones, or any other
5 form of general public political advertising or marketing,
6 regardless of medium.

7 "Traceable funds" means funds that:

- 8 (1) Have been contributed to a covered person and over
9 which the contributor has not exercised the option
10 under section 11-D to exclude from the use or transfer
11 of funds for independent campaign spending; or
12 (2) Are used to finance in-kind contributions to a covered
13 person to enable independent campaign spending.

14 "Transfer record" means a written record of identity of the
15 persons who directly or indirectly contributed or transferred
16 original funds used for independent campaign spending, the
17 amounts of those contributions or transfers, and how those funds
18 are disbursed.

19 **§11-B Independent campaign spending; entities under a**
20 **person's control.** A person's independent campaign spending



1 includes independent campaign spending made by entities
2 established, financed, maintained, or controlled by the person.

3 **§11-C Transfer records.** A covered person shall maintain
4 transfer records if the person spends at least \$10,000 in a
5 two-year election period on independent campaign spending, or
6 accepts at least \$10,000 in a two-year election period of
7 in-kind contributions to enable independent campaign spending.

8 **§11-D Donors; consent.** Before a covered person may use or
9 transfer a donor's funds for independent campaign spending, the
10 covered person shall provide the contributor with a written
11 notice that:

12 (1) Shall inform the contributor that the donated funds
13 may be used for independent campaign spending within
14 the State and that the covered person may need to
15 report information about the donor to the commission
16 for disclosure to the public;

17 (2) Shall inform the donor that the donor may exclude the
18 donated funds from the intended use or transfer for
19 independent campaign spending in the State by
20 providing the covered person with a written request



1 within twenty-one days after the donor's receipt of
2 the notice; and

- 3 (3) May be provided to the donor before, after, or at the
4 same time the covered person receives the donation;
5 provided that the donated funds shall not be used or
6 transferred for independent campaign spending until
7 the twenty-second day after the donor receives the
8 notice or provides written consent for the intended
9 use or transfer, whichever occurs first.

10 **§11-E Major contributors.** (a) Any person that
11 contributes at least \$10,000 in the aggregate in traceable funds
12 in a two-year election period to a covered person shall inform
13 the covered person, within ten days of receiving a written
14 request from the covered person, of the identities of persons
15 that directly or indirectly contributed at least \$1,000 in
16 original funds transferred, the amounts of the persons' original
17 funds transferred, and any persons that have previously
18 transferred the original funds. If more than one transfer has
19 previously occurred, the contributor shall disclose all the
20 previous transfers and intermediaries. The contributor shall



1 maintain these records for at least five years and shall provide
2 them to the commission upon request.

3 (b) Any person that makes an in-kind contribution to a
4 covered person of at least \$10,000 in a two-year election period
5 for the purpose of enabling independent campaign spending shall
6 inform the covered person, at the time the in-kind contribution
7 is made or promised to be made, of the identities of persons
8 that directly or indirectly contributed or provided at least
9 \$1,000 in original funds to finance the in-kind contribution,
10 the amounts of funds used from each persons' original funds, and
11 any persons who had previously transferred the original funds.
12 If more than one transfer previously occurred, the in-kind
13 contributor shall disclose all the previous transfers and
14 intermediaries. The in-kind contributor shall maintain these
15 records for at least five years and shall provide them to the
16 commission upon request.

17 **§11-F Disclosure reports.** (a) Within ten days of a
18 covered person's initial disbursement of \$10,000 in the
19 aggregate in funds on independent campaign spending during a
20 two-year election period, or a covered person's acceptance of at
21 least \$10,000 of in-kind contributions in the aggregate to



1 enable independent campaign spending during a two-year election
2 period, the covered person shall electronically file with the
3 commission an initial report that discloses:

4 (1) The identity of any person that owns or controls any
5 traceable funds, as applicable;

6 (2) The identity of any affiliated person that maintains
7 its own transfer records and that person's
8 relationship to the covered person;

9 (3) The name, address, and position of the individual who
10 is the custodian of the transfer records;

11 (4) The name, address, and position of at least one
12 individual authorized to directly or indirectly
13 control how the traceable funds are disbursed;

14 (5) The total amount of traceable funds owned or
15 controlled by the covered person on the date of the
16 report;

17 (6) Each contributor of original funds that has directly
18 or indirectly contributed more than \$5,000 of
19 traceable funds or in-kind contributions during the
20 two-year election period to the covered person, and



1 the date and amount of each of the contributor's
2 contributions;

3 (7) The identity of each person that acted as an
4 intermediary and that transferred traceable funds in
5 whole or part from an original source to the covered
6 person, and the date, amount, and original and
7 intermediate sources, of the transferred funds;

8 (8) The identity of each person who received from the
9 covered person disbursements of at least \$1,000 in the
10 aggregate of traceable funds during the two-year
11 election period and the date and purpose of each
12 disbursement, including the full name and office
13 sought of any candidate that was supported, opposed,
14 or referenced in a public communication that was
15 financed, in whole or part, with the disbursement; and

16 (9) The identity of any person that was the contributor of
17 the majority of the traceable funds in the covered
18 person's custody at the beginning of the two-year
19 election period.

20 (b) Within ten days after a covered person has disbursed
21 an additional \$10,000 in the aggregate in funds on independent



1 campaign spending during the two-year election period described
2 in subsection (a), or receives an additional \$10,000 of in-kind
3 contributions in the aggregate to enable independent campaign
4 spending during the two-year election period described in
5 subsection (a), the covered person shall electronically file
6 with the commission a subsequent report. Each subsequent report
7 shall disclose what, if any, information has changed from the
8 initial report.

9 (c) If information reported pursuant to subsection (a)(1)
10 to (4) is changed but has not yet been reported pursuant to
11 subsection (b), the covered person, within twenty days after the
12 change is made, shall electronically file with the commission a
13 report that includes the updated information; provided that the
14 covered person shall not be required to report any changes that
15 occur more than two years after the filing of the most recent
16 report required by this section.

17 (d) Except as provided in subsection (e), a noncandidate
18 committee that is also a covered person may satisfy the timing
19 requirements for reports required by this section by filing
20 reports required by section 11-336 that also include the
21 information required by this section.



(e) If a noncandidate committee is a covered person that is required to file a report under this section, and the deadline for the filing of the report based on the requirements of subsection (a) or (b) is within fourteen days before an election, the noncandidate committee shall instead file the report within the three days after the applicable aggregate monetary amount as described in subsection (a) or (b) is met.

§11-G Identification of certain top contributors. (a)

Except as otherwise provided by this section, any public communication funded by independent campaign spending by a covered person or created through any in-kind contribution received by a covered person shall include a notice that includes:

- (1) Any information required by section 11-391; and
- (2) The words: "The three top contributors who helped pay for this message are", followed by the names of the three top contributors as determined pursuant to subsection (c).

(b) If the public communication:



- 1 (1) Has a visual component, a notice required by this
2 section shall be displayed in clear and conspicuous
3 text;
- 4 (2) Has an audio component, a notice required by this
5 section shall be stated by an audible voice in a clear
6 and conspicuous manner; or
- 7 (3) Is disseminated on the internet or by other digital
8 means and:
- 9 (A) As a text or graphic communication, a notice
10 required by this section shall appear:
- 11 (i) In letters that are at least large as the
12 majority of the text in the communication;
- 13 (ii) In a box to set the notice apart from the
14 other contents of the communication; and
- 15 (iii) In text in a color that has a reasonable
16 degree of contrast with the color of the
17 background behind the text;
- 18 (B) As an audio communication, a notice required by
19 this section shall be spoken in a clearly audible
20 and intelligible voice that is heard over a



1 four-second or longer period at the beginning or
2 end of the communication;

3 (C) As a communication that includes both a video and
4 an audio component, a notice required by this
5 section:

6 (i) Shall be displayed in a manner that complies
7 with subparagraph (A) and shall be displayed
8 at the same time any notice is spoken
9 pursuant to clause (ii); and

10 (ii) Shall be spoken in a manner that complies
11 with subparagraph (B); provided that if the
12 communication is less than ten seconds long,
13 the audio version of the notice may be
14 excluded;

15 (D) In a format other than the formats described in
16 subparagraphs (A) to (C), a notice required by
17 this section shall be included in the
18 communication as described in subparagraph (A),
19 (B), or (C) to the extent possible for the
20 format; provided that the notice is clear and
21 conspicuous;



- 1 (E) In a manner or format that makes it
2 technologically impossible to include the notice
3 described subsection (a) in the communication,
4 the notice described in subsection (a) may be
5 excluded from the public communication; provided
6 that the communication shall include an
7 alternative notice that shall:
- 8 (i) State the name of the person that paid for
9 the public communication; and
- 10 (ii) Provide means for a recipient of the public
11 communication to immediately obtain the
12 information described in subsection (a) with
13 minimal effort and without requiring the
14 recipient to receive or view any additional
15 material, other than the information
16 described in subsection (a); and
- 17 (F) Is not in compliance with this section if the
18 required notice would be difficult to read,
19 difficult to hear, or if its placement would
20 likely be overlooked by a recipient of the
21 communication.



1 (c) For the purposes of determining the persons that are
2 to be top three contributors as described in subsection (a)(2):

3 (1) The top three contributors shall be determined by
4 calculating the three contributors of traceable funds
5 that have directly or indirectly contributed to the
6 covered person the highest amounts of original funds
7 during the two-year election period;

8 (2) Contributions of traceable funds made in prior
9 two-year election periods shall be considered to have
10 been contributed in the current two-year election
11 period if the contributor's aggregate contributions of
12 original funds to the covered person constituted the
13 majority of the covered person's traceable funds at
14 the beginning of the two-year election period;

15 (3) If multiple contributors have contributed identical
16 amounts to a covered person so that there is no
17 difference in the amounts contributed by the
18 third-highest contributor and the fourth-highest or
19 lower-level contributor, the contributor that most
20 recently contributed to the covered person shall be
21 deemed a top three contributor;



1 (4) No contributor of traceable funds shall be deemed a
2 top three contributor if the aggregate amount of the
3 contributor's contributions of original funds to the
4 covered person during the two-year election period is
5 less than \$10,000; and

6 (5) To the extent that fewer than three contributors meet
7 the \$10,000 threshold in paragraph (4), an
8 intermediary that directly or indirectly transferred,
9 at least \$10,000 in traceable funds to the covered
10 person during the two-year election period shall be
11 treated as the original source of funds for the
12 purposes of the notice required by this section.

13 **§11-H Structured transactions; prohibited.** No person may
14 structure or assist in structuring, or attempt to structure or
15 assist in structuring, any solicitation, contribution,
16 expenditure, disbursement, or other transaction to evade the
17 reporting requirements of this subpart.

18 **§11-I Penalties.** Any person who violates this subpart or
19 any rule adopted by the commission pursuant to this subpart
20 shall be fined an amount not less than the amount contributed or
21 spent in violation of this subpart, nor more than twice the



1 amount contributed or spent in violation of this subpart. Any
2 action taken to impose or collect the penalty provided for in
3 this section shall be considered a civil action.

4 **§11-J Rules.** The commission shall adopt rules, pursuant
5 to chapter 91, necessary for the purposes of this subpart."

6 SECTION 3. Section 11-341, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) Each statement of information shall contain the
9 following:

10 (1) The name of the person making the expenditure, name of
11 any person or entity sharing or exercising discretion
12 or control over the person, and the custodian of the
13 books and accounts of the person making the
14 expenditure;

15 (2) The names and titles of the executives or board of
16 directors who authorized the expenditure, if the
17 expenditure was made by a noncandidate committee,
18 business entity, or an organization;

19 (3) The state of incorporation or formation and principal
20 address of the noncandidate committee, business
21 entity, or organization or for an individual, the



1 name, address, occupation, and employer of the
2 individual making the expenditure;

3 (4) The amount of each expenditure during the period
4 covered by the statement and the identification of the
5 person to whom the expenditure was made;

6 (5) The elections to which the electioneering
7 communications pertain and the names of any clearly
8 identifiable candidates and whether those candidates
9 are supported or opposed;

10 (6) If the expenditures were made by a noncandidate
11 committee, the names and addresses of all persons who
12 contributed to the noncandidate committee for the
13 purpose of publishing or broadcasting the
14 electioneering communications;

15 (7) If the expenditures were made by an organization other
16 than a noncandidate committee, the names and addresses
17 of all persons who contributed to the organization for
18 the purpose of publishing or broadcasting the
19 electioneering communications;

20 (8) Whether any electioneering communication is made in
21 coordination, cooperation, or concert with or at the



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1 request or suggestion of any candidate, candidate
2 committee, or noncandidate committee, or agent of any
3 candidate if any, and if so, the identification of the
4 candidate, candidate committee, or noncandidate
5 committee, or agent involved; and

6 (9) The three top contributors as required under section
7 ~~[11-393,]~~ 11-G, if applicable."

8 SECTION 4. Section 11-393, Hawaii Revised Statutes, is
9 repealed.

10 ~~["~~[§11-393]~~ Identification of certain top contributors to~~

11 ~~noncandidate committees making only independent expenditures.~~

12 ~~(a) An advertisement shall contain an additional notice in a~~

13 ~~prominent location immediately after or below the notices~~

14 ~~required by section 11-391, if the advertisement is broadcast,~~

15 ~~televised, circulated, or published, including by electronic~~

16 ~~means, and is paid for by a noncandidate committee that~~

17 ~~certifies to the commission that it makes only independent~~

18 ~~expenditures. This additional notice shall start with the~~

19 ~~words, "The three top contributors for this advertisement are",~~

20 ~~followed by the names of the three top contributors, as defined~~

21 ~~in subsection (c), who made the highest aggregate contributions~~



1 ~~to the noncandidate committee for the purpose of funding the~~
2 ~~advertisement; provided that:~~

3 ~~(1) If a noncandidate committee is only able to identify~~
4 ~~two top contributors who made contributions for the~~
5 ~~purpose of funding the advertisement, the additional~~
6 ~~notice shall start with the words, "The two top~~
7 ~~contributors for this advertisement are", followed by~~
8 ~~the names of the two top contributors;~~

9 ~~(2) If a noncandidate committee is able to identify only~~
10 ~~one top contributor who made contributions for the~~
11 ~~purpose of funding the advertisement, the additional~~
12 ~~notice shall start with the words, "The top~~
13 ~~contributor for this advertisement is", followed by~~
14 ~~the name of the top contributor;~~

15 ~~(3) If a noncandidate committee is unable to identify any~~
16 ~~top contributors who made contributions for the~~
17 ~~purpose of funding the advertisement, the additional~~
18 ~~notice shall start with the words, "The three top~~
19 ~~contributors for this noncandidate committee are",~~
20 ~~followed by the names of the three top contributors~~



~~who made the highest aggregate contributions to the
noncandidate committee; and~~

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

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

~~(b) If a noncandidate committee has more than three top
contributors who contributed in equal amounts, the noncandidate
committee may select which of the top contributors to identify
in the advertisement; provided that the top contributors not
identified in the advertisement did not make a higher aggregate
contribution than those top contributors who are identified in
the advertisement. The additional notice required for
noncandidate committees described under this subsection shall
start with the words "Three of the top contributors for this
advertisement are" or "Three of the top contributors to this
noncandidate committee are", as appropriate, followed by the
names of the three top contributors.~~



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

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

~~(e) For purposes of this part, "top contributor" means a contributor who has contributed an aggregate amount of \$10,000 or more to a noncandidate committee within a twelve-month period prior to the purchase of an advertisement."]~~

SECTION 5. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.



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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.

13

INTRODUCED BY: 



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Report Title:

Campaign Spending Commission; Independent Campaign Spending

Description:

Requires the maintenance of transfer records relating to certain campaign contributions and transfers. Requires certain covered persons to seek permission from donors to use or transfer contributed funds for independent campaign spending. Requires certain major contributors to disclose and maintain relevant records relating to the identities of other contributors. Requires certain covered persons to file disclosure reports with the Campaign Spending Commission. Facilitates the identification of certain top contributors of funds for certain political advertisements. Prohibits structured transactions.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

