
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 also concluded that foreign-
16 influenced activities include "criminal efforts to suppress
17 voting and provide illegal campaign financing", as set forth in



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

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

10 (2) Allowing every business entity that contributes or
11 expends funds in a state election to certify that the
12 entity is not and will not be a foreign corporation or
13 foreign-influenced business entity if the entity
14 intends to make contributions or expenditures within
15 an election cycle;

16 (3) Specifying that if the conditions that determine
17 whether a business entity qualifies as a
18 foreign-influenced business entity are held
19 unconstitutional by a final judgment, including all
20 appeals, the campaign spending commission is required



1 to establish revised conditions that are
 2 constitutional; and
 3 (4) Requiring noncandidate committees making only
 4 independent expenditures to obtain a statement of
 5 certification from each top contributor required to be
 6 listed in an advertisement avowing that none of the
 7 funds contributed were derived from foreign entities
 8 or foreign-influenced business entities.

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

12 "Business entity" means a for-profit corporation, company,
 13 limited liability company, limited partnership, business trust,
 14 or business association, or other similar for-profit business
 15 entity.

16 "Foreign-influenced business entity" means a business
 17 entity that meets at least one of the following conditions:

18 (1) A single foreign investor holds, owns, controls, or
 19 otherwise has direct or indirect beneficial ownership
 20 of one per cent or more of the total equity,



1 outstanding voting shares, membership units, or other
2 applicable ownership interests of the business entity;

3 (2) Six or more foreign investors, in aggregate, hold,
4 own, control, or otherwise have direct or indirect
5 beneficial ownership of five per cent or more of the
6 total equity, outstanding voting shares, membership
7 units, or other applicable ownership interests of the
8 business entity; or

9 (3) A foreign investor participates directly or indirectly
10 in the business entity's decision-making process with
11 respect to the business entity's political activities
12 in the United States.

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

14 (1) Holds, owns, controls, or otherwise has direct or
15 indirect beneficial ownership of equity, outstanding
16 voting shares, membership units, or other applicable
17 ownership interests of a business entity; and

18 (2) Is:

19 (A) A government of a foreign country;

20 (B) A foreign political party;



1 (C) An individual outside the United States who is
2 not a citizen of the United States or a national
3 of the United States and who is not lawfully
4 admitted for permanent residence; or

5 (D) A business entity:

6 (i) That is organized under the laws of or
7 having its principal place of business in a
8 foreign country; or

9 (ii) In which a person or entity described in
10 subparagraph (A), (B), or (C) holds, owns,
11 controls, or otherwise has directly or
12 indirectly acquired a beneficial ownership
13 of equity, voting shares, membership units,
14 or other applicable ownership interests of
15 the business entity in an amount that is
16 equal to or greater than fifty per cent of
17 the total equity, outstanding voting shares,
18 membership units, or other applicable
19 ownership interests of the business entity."

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



1 "~~{}~~§11-356~~{}~~ Contributions and expenditures by a foreign
2 national ~~{}~~, foreign corporation, or foreign-influenced
3 business entity; prohibited. (a) ~~[Except as provided in~~
4 ~~subsection (b), no]~~ No contributions or expenditures shall be
5 made to or on behalf of a candidate, candidate committee, or
6 noncandidate committee~~{}~~ by a foreign national ~~{}~~, foreign
7 corporation, or foreign-influenced business entity, including a
8 domestic subsidiary of a foreign corporation, ~~{}~~ domestic
9 corporation that is owned by a foreign national, or ~~{}~~ local
10 subsidiary where administrative control is retained by the
11 foreign corporation~~{}~~ ~~and in the same manner prohibited under 2~~
12 ~~United States Code section 441e and 11 Code of Federal~~
13 ~~Regulations section 110.20, as amended.~~

14 ~~(b) A foreign-owned domestic corporation may make~~
15 ~~contributions if:~~

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

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



1 (b) No independent expenditures or electioneering
2 communications shall be made by a foreign national, foreign
3 corporation, or foreign-influenced business entity.

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

10 (d) If a business entity intends to make contributions to
11 or expenditures on behalf of a candidate, candidate committee,
12 or noncandidate committee, including independent expenditures or
13 electioneering communications, within an election cycle, that
14 business entity may, within seven days after making its first
15 contribution or expenditure of an election cycle, file with the
16 commission a statement of certification signed by the business
17 entity's chief executive officer avowing under penalty of
18 perjury that:

19 (1) After due inquiry, the business entity was not a
20 foreign corporation or foreign-influenced business



1 entity on the date the contribution or expenditure was
2 made;

3 (2) The business entity will conduct due inquiry before
4 any future contribution or expenditure to determine if
5 the business entity has become a foreign corporation
6 or foreign-influenced business entity; and

7 (3) Any future contribution or expenditure shall only be
8 made if the commission determines, after due inquiry,
9 that the business entity is not a foreign corporation
10 or foreign-influenced business entity.

11 (e) For the purposes of certification under subsection
12 (d), the business entity shall ascertain beneficial ownership in
13 a manner:

14 (1) Consistent with the Hawaii Business Corporation Act,
15 chapter 414; or

16 (2) If it is registered on a national securities exchange,
17 as set forth in title 17 Code of Federal Regulations
18 sections 240.13d-3 and 240.13d-5.

19 The business entity shall provide a copy of the statement
20 of certification required pursuant to subsection (d) to any

1 candidate or committee to which it contributes and, upon request
2 of the recipient, to any other person to which it contributes.

3 (f) If the conditions that determine whether a business
4 entity qualifies as a foreign-influenced business entity
5 pursuant to section 11-302 are held to be unconstitutional by a
6 binding final judgment of court, inclusive of all appeals, the
7 commission shall establish revised conditions that are
8 constitutional and further the State's interest as set forth in
9 Act , Session Laws of Hawaii 2025; provided that the revised
10 conditions shall be relied upon by business entities in
11 determining whether they are foreign-influenced business
12 entities pursuant to this section.

13 (g) A contribution made by a foreign national, foreign
14 corporation, or foreign-influenced business entity shall escheat
15 to the Hawaii election campaign fund.

16 (h) For the purposes of this section:

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

20 "Earmarked" means a designation or instruction, whether
21 direct or indirect, express or implied, oral or written, that



1 results in all or any part of the contribution or donation being
2 expended in a manner that would be prohibited by this section if
3 made by a foreign national, foreign corporation, or
4 foreign-influenced business entity."

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

7 **"§11-393 Identification of certain top contributors to**
8 **noncandidate committees making only independent expenditures.**

9 (a) An advertisement shall contain an additional notice in a
10 prominent location immediately after or below the notices
11 required by section 11-391, if the advertisement is broadcast,
12 televised, circulated, or published, including by electronic
13 means, and is paid for by a noncandidate committee that
14 certifies to the commission that it makes only independent
15 expenditures. This additional notice shall start with the
16 words, "The three top contributors for this advertisement are",
17 followed by the names of the three top contributors [~~as defined~~
18 ~~in subsection (e),~~] who made the highest aggregate contributions
19 to the noncandidate committee for the purpose of funding the
20 advertisement; provided that:



- 1 (1) If a noncandidate committee is only able to identify
2 two top contributors who made contributions for the
3 purpose of funding the advertisement, the additional
4 notice shall start with the words, "The two top
5 contributors for this advertisement are", followed by
6 the names of the two top contributors;
- 7 (2) If a noncandidate committee is able to identify only
8 one top contributor who made contributions for the
9 purpose of funding the advertisement, the additional
10 notice shall start with the words, "The top
11 contributor for this advertisement is", followed by
12 the name of the top contributor;
- 13 (3) If a noncandidate committee is unable to identify any
14 top contributors who made contributions for the
15 purpose of funding the advertisement, the additional
16 notice shall start with the words, "The three top
17 contributors for this noncandidate committee are",
18 followed by the names of the three top contributors
19 who made the highest aggregate contributions to the
20 noncandidate committee; and



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

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

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

19 (c) This section shall not apply to advertisements
20 broadcast by radio or television of [~~such~~] short duration that
21 including a list of top contributors in the advertisement would



1 constitute a hardship to the noncandidate committee paying for
2 the advertisement. A noncandidate committee shall be subject to
3 all other requirements under this part regardless of whether a
4 hardship exists pursuant to this subsection. The commission
5 shall adopt rules pursuant to chapter 91 to establish criteria
6 to determine when including a list of top contributors in an
7 advertisement of short duration constitutes a hardship to a
8 noncandidate committee under this subsection.

9 (d) A noncandidate committee shall obtain a statement of
10 certification, signed under oath as defined in, and on a form as
11 described in, section 710-1000, from each top contributor
12 required to be listed in an advertisement pursuant to this
13 section avowing under penalty of law that, after due inquiry,
14 none of the funds contributed by the top contributor were
15 derived from a foreign national, foreign corporation, or
16 foreign-influenced business entity. If a noncandidate committee
17 does not receive a statement of certification from a top
18 contributor, the advertisement shall include the following
19 statement: "Some of the funds used to pay for this message may
20 have been provided by foreign corporations or foreign-influenced
21 business entities". A noncandidate committee may rely on a



1 statement of certification provided by a top contributor unless
2 the noncandidate committee has actual knowledge that the
3 statement of certification is false.

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

7 [~~e~~] (f) For purposes of this section, "top contributor"
8 means a contributor who has contributed an aggregate amount of
9 \$10,000 or more to a noncandidate committee within a
10 twelve-month period before the purchase of an advertisement."

11 SECTION 5. Nothing in this Act shall be construed to
12 diminish or infringe upon any right protected under the First
13 Amendment of the Constitution of the United States or conflict
14 with any federal statute or regulation.

15 SECTION 6. If any provision of this Act, or the
16 application thereof to any person or circumstance, is held
17 invalid, the invalidity does not affect other provisions or
18 applications of the Act that can be given effect without the
19 invalid provision or application, and to this end the provisions
20 of this Act are severable.



1 SECTION 7. 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 8. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 9. This Act shall take effect on July 1, 3000.



Report Title:

CSC; Campaign Finance; Foreign Entities; Foreign-influenced Business Entities

Description:

Prohibits foreign entities and foreign-influenced business entities from making contributions, expenditures, electioneering communications, or donations for election purposes. Allows every business entity that contributes or expends funds in a state election to certify that the entity is not and will not be a foreign corporation or foreign-influenced business entity if the entity intends to make contributions or expenditures within an election cycle. Specifies that if the conditions that determine whether a business entity qualifies as a foreign-influenced business entity are held unconstitutional by a final judgment, including all appeals, the Campaign Spending Commission is required to establish revised conditions that are constitutional. Requires noncandidate committees making only independent expenditures to obtain a statement of certification from each top contributor required to be listed in an advertisement avowing that no funds were derived from foreign entities or foreign-influenced business entities. Effective 7/1/3000. (HD1)

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