
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) Prohibiting foreign entities and foreign-influenced
7 business entities from making contributions,
8 expenditures, electioneering communications, or
9 donations for election purposes;
- 10 (2) Requiring every business entity that contributes or
11 expends funds in an election to file a statement of
12 certification regarding its status as a foreign
13 corporation or foreign-influenced business entity; and
- 14 (3) Requiring noncandidate committees making only
15 independent expenditures to obtain a statement of
16 certification from each top contributor required to be
17 listed in an advertisement.

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



1 "Business entity" means a for-profit corporation, company,
2 limited liability company, limited partnership, business trust,
3 business association, or other similar for-profit business
4 entity.

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

- 7 (1) A single foreign investor holds, owns, controls, or
8 otherwise has direct or indirect beneficial ownership
9 of one per cent or more of the total equity,
10 outstanding voting shares, membership units, or other
11 applicable ownership interests of the business entity;
12 (2) Two or more foreign investors, in aggregate, hold,
13 own, control, or otherwise have direct or indirect
14 beneficial ownership of five per cent or more of the
15 total equity, outstanding voting shares, membership
16 units, or other applicable ownership interests of the
17 business entity; or
18 (3) A foreign investor participates directly or indirectly
19 in the business entity's decision-making process with
20 respect to the business entity's political activities
21 in the United States.



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 business entity; and

6 (2) Is:

7 (A) A government of a foreign country;

8 (B) A foreign political party;

9 (C) An individual outside the United States who is
10 not a citizen of the United States or a national
11 of the United States and who is not lawfully
12 admitted for permanent residence; or

13 (D) A business entity that:

14 (i) Is organized under the laws of or having its
15 principal place of business in a foreign
16 country; or

17 (ii) In which a person or entity described in
18 subparagraph (A), (B), or (C) holds, owns,
19 controls, or otherwise has directly or
20 indirectly acquired a beneficial ownership
21 of equity, voting shares, membership units,



1 or other applicable ownership interests of
 2 the business entity in an amount that is
 3 equal to or greater than fifty per cent of
 4 the total equity, outstanding voting shares,
 5 membership units, or other applicable
 6 ownership interests of the business entity."

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

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



1 ~~(b) A foreign-owned domestic corporation may make~~
2 ~~contributions if:~~

- 3 ~~(1) Foreign national individuals do not participate in~~
4 ~~election-related activities, including decisions~~
5 ~~concerning contributions or the administration of a~~
6 ~~candidate committee or noncandidate committee; or~~
7 ~~(2) The contributions are domestically derived].~~

8 (b) No independent expenditures or electioneering
9 communications shall be made by a foreign national, foreign
10 corporation, or foreign-influenced business entity.

11 (c) No contribution or donation shall be made to any
12 person by a foreign national, foreign corporation, or
13 foreign-influenced business entity if the contribution or
14 donation is earmarked for the recipient to make a campaign
15 finance contribution or expenditure, including independent
16 expenditure or electioneering communication.

17 (d) Every business entity that contributes to or makes an
18 expenditure on behalf of a candidate, candidate committee, or
19 noncandidate committee, including an independent expenditure or
20 electioneering communication, shall, within seven business days
21 after making the contribution or expenditure, file with the



1 commission a statement of certification signed by the business
2 entity's chief executive officer avowing under penalty of
3 perjury that, after due inquiry, the business entity was not a
4 foreign corporation or foreign-influenced business entity on the
5 date the contribution or expenditure was made. For purposes of
6 this certification, the business entity shall ascertain
7 beneficial ownership in a manner consistent with the Hawaii
8 Business Corporation Act or, if it is registered on a national
9 securities exchange, as set forth in title 17 Code of Federal
10 Regulations sections 240.13d-3 and 240.13d-5. The business
11 entity shall provide a copy of the statement of certification to
12 any candidate or committee to which it contributes and, upon
13 request of the recipient, to any other person to which it
14 contributes.

15 (e) For the purposes of this section:

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

19 "Earmarked" means a designation or instruction, whether
20 direct or indirect, express or implied, oral or written, that
21 results in all or any part of the contribution or donation being



1 expended in a manner that would be prohibited by this section if
2 made by the foreign national, foreign corporation, or
3 foreign-influenced business entity."

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

6 **"§11-393 Identification of certain top contributors to**
7 **noncandidate committees making only independent expenditures.**

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

20 (1) If a noncandidate committee is only able to identify
21 two top contributors who made contributions for the



1 purpose of funding the advertisement, the additional
2 notice shall start with the words, "The two top
3 contributors for this advertisement are", followed by
4 the names of the two top contributors;

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

11 (3) If a noncandidate committee is unable to identify any
12 top contributors who made contributions for the
13 purpose of funding the advertisement, the additional
14 notice shall start with the words, "The three top
15 contributors for this noncandidate committee are",
16 followed by the names of the three top contributors
17 who made the highest aggregate contributions to the
18 noncandidate committee; and

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



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

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

16 (c) This section shall not apply to advertisements
17 broadcast by radio or television of [~~such~~] short duration that
18 including a list of top contributors in the advertisement would
19 constitute a hardship to the noncandidate committee paying for
20 the advertisement. A noncandidate committee shall be subject to
21 all other requirements under this part regardless of whether a



1 hardship exists pursuant to this subsection. The commission
2 shall adopt rules pursuant to chapter 91 to establish criteria
3 to determine when including a list of top contributors in an
4 advertisement of short duration constitutes a hardship to a
5 noncandidate committee under this subsection.

6 (d) A noncandidate committee shall obtain a statement of
7 certification from each top contributor required to be listed in
8 an advertisement pursuant to this section avowing under penalty
9 of perjury that, after due inquiry, none of the funds
10 contributed by the top contributor were derived from a foreign
11 corporation or foreign-influenced business entity. If a
12 noncandidate committee does not receive a statement of
13 certification from a top contributor, the advertisement shall
14 include the following statement: "Some of the funds used to pay
15 for this message may have been provided by foreign corporations
16 or foreign-influenced business entities". A noncandidate
17 committee may rely on a statement of certification provided by a
18 top contributor unless the noncandidate committee has actual
19 knowledge that the statement of certification is false.



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

4 [~~(e)~~] (f) For purposes of this section, "top contributor"
5 means a contributor who has contributed an aggregate amount of
6 \$10,000 or more to a noncandidate committee within a
7 twelve-month period before the purchase of an advertisement."

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

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

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



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

3 SECTION 9. This Act shall take effect on July 1, 2025.



Report Title:

Campaign Finance; Foreign Corporations; Foreign Nationals

Description:

Prohibits foreign entities and foreign-influenced business entities from making contributions, expenditures, electioneering communications, or donations for election purposes. 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. (SD1)

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