
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 the State and not
6 by 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 the State, both foreign nationals and foreign corporations
19 are prohibited from making contributions or expenditures to or
20 on behalf of a candidate, candidate committee, or noncandidate
21 committee. However, more can be done to protect the integrity



1 of the State's democratic self-government from foreign entities
2 that seek to influence state 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 nationals, foreign corporations,
7 and foreign-influenced business entities from making
8 contributions, expenditures, electioneering
9 communications, or donations for election purposes;
- 10 (2) Requiring every for-profit business entity that
11 contributes or expends funds in a state election to
12 certify that the entity was not a foreign corporation
13 or foreign-influenced business entity when the
14 contribution or expenditure was made; provided that
15 entities engaged in transporting cargo and subject to
16 section 27 of the Merchant Marine Act of 1920 (46
17 U.S.C. 55102) are exempt from this requirement;
- 18 (3) Specifying that if the conditions that determine
19 whether a business entity qualifies as a
20 foreign-influenced business entity are held
21 unconstitutional by a final judgment, including all



1 appeals, the campaign spending commission is required
2 to establish revised conditions that are
3 constitutional; and

4 (4) Requiring noncandidate committees making only
5 independent expenditures to obtain a statement of
6 certification from each top contributor required to be
7 listed in an advertisement avowing that none of the
8 funds contributed were derived from foreign nationals,
9 foreign corporations, or foreign-influenced business
10 entities.

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

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

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

20 (1) A single foreign investor holds, owns, controls, or
21 otherwise has direct or indirect beneficial ownership



1 of one per cent or more of the total equity,
2 outstanding voting shares, membership units, or other
3 applicable ownership interests of the business entity
4 and the foreign investor exercises control over, or
5 has the ability to direct, the business entity's
6 election-related spending;

7 (2) Six or more foreign investors, in aggregate, hold,
8 own, control, or otherwise have direct or indirect
9 beneficial ownership of five per cent or more of the
10 total equity, outstanding voting shares, membership
11 units, or other applicable ownership interests of the
12 business entity and the foreign investors, acting
13 individually or collectively, exercise control over,
14 or have the ability to direct, the business entity's
15 election-related spending; or

16 (3) A foreign investor participates directly or indirectly
17 in the business entity's decision-making process with
18 respect to the business entity's political activities
19 in the United States.

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



- 1 (1) Holds, owns, controls, or otherwise has direct or
2 indirect beneficial ownership of equity, outstanding
3 voting shares, membership units, or other applicable
4 ownership interests of a business entity; and
- 5 (2) Is:
- 6 (A) A government or subdivision of a foreign country;
7 (B) A foreign political party;
8 (C) An individual outside the United States who is
9 not a citizen of the United States or a national
10 of the United States and who is not lawfully
11 admitted for permanent residence; or
- 12 (D) A business entity:
- 13 (i) That is organized under the laws of or
14 having its principal place of business in a
15 foreign country; or
- 16 (ii) In which a person or entity described in
17 subparagraph (A), (B), or (C) holds, owns,
18 controls, or otherwise has directly or
19 indirectly acquired a beneficial ownership
20 of equity, voting shares, membership units,
21 or other applicable ownership interests of



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

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

8 "[+]§11-356[+] **Contributions and expenditures by a foreign**

9 **national [e], foreign corporation, or foreign-influenced**

10 **business entity; prohibited.** (a) [~~Except as provided in~~

11 ~~subsection (b), no]~~ No contributions or expenditures shall be

12 made to or on behalf of a candidate, candidate committee, or

13 noncandidate committee[~~r~~] by a foreign national [e], foreign

14 corporation, or foreign-influenced business entity, including a

15 domestic subsidiary of a foreign corporation, [a] domestic

16 corporation that is owned by a foreign national, or [a] local

17 subsidiary where administrative control is retained by the

18 foreign corporation[~~, and in the same manner prohibited under 2~~

19 ~~United States Code section 441c and 11 Code of Federal~~

20 ~~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) Within seven calendar days, a business entity that
18 makes a contribution or expenditure, including an independent
19 expenditure or electioneering communication, shall file with the
20 commission a statement of certification, signed under oath as
21 defined in, and on a form as described in, section 710-1000, by



1 the business entity's chief executive officer avowing under
2 penalty of law that, after due inquiry, the business entity was
3 not a foreign corporation or foreign-influenced business entity
4 on the date the contribution or expenditure was made.

5 (e) If a business entity intends to make more than one
6 contribution to or expenditure on behalf of a candidate,
7 candidate committee, or noncandidate committee, including
8 independent expenditures or electioneering communications,
9 within an election cycle, that business entity may, within seven
10 days after making its first contribution or expenditure of an
11 election cycle, file with the commission a statement of
12 certification, signed under oath as defined in, and on a form as
13 described in, section 710-1000, by the business entity's chief
14 executive officer avowing under penalty of law that:

15 (1) After due inquiry, the business entity was not a
16 foreign corporation or foreign-influenced business
17 entity on the date that any contribution or
18 expenditure was made;

19 (2) The business entity will conduct due inquiry before
20 any future contribution or expenditure to determine if



1 the business entity has become a foreign corporation
2 or foreign-influenced business entity; and

3 (3) Any future contribution or expenditure shall only be
4 made if the business entity determines, after due
5 inquiry, that the business entity is not a foreign
6 corporation or foreign-influenced business entity.

7 (f) If a business entity does not file a certificate with
8 the campaign spending commission that complies with subsection
9 (e), then the business entity shall file a certificate that
10 complies with subsection (d) within seven days after each
11 contribution or expenditure, including any independent
12 expenditure or electioneering communication.

13 (g) If a business entity files a certificate in compliance
14 with subsection (e) during an election cycle and later in that
15 same election cycle determines that the business entity has
16 become a foreign corporation or foreign-influenced business
17 entity, the business entity shall, within seven days of that
18 determination, file with the commission a statement, signed
19 under oath as defined in, and on a form as described in, section
20 710-1000, by the business entity's chief executive officer



1 avowing under penalty of law that the business entity has become
2 a foreign corporation or foreign-influenced business entity.

3 (h) For the purposes of certification under subsections
4 (d) and (e), the business entity shall ascertain beneficial
5 ownership in a manner:

6 (1) Consistent with the Hawaii Business Corporation Act,
7 chapter 414; or

8 (2) If the business entity is registered on a national
9 securities exchange, as set forth in title 17 Code of
10 Federal Regulations sections 240.13d-3 and 240.13d-5.

11 (i) If the conditions that determine whether a business
12 entity qualifies as a foreign-influenced business entity
13 pursuant to section 11-302 are held to be unconstitutional by a
14 binding final judgment of court, inclusive of all appeals, the
15 commission shall establish revised conditions that are
16 constitutional and further the State's interest as set forth in
17 Act _____, Session Laws of Hawaii 2026; provided that the
18 revised conditions shall be relied upon by business entities in
19 determining whether they are foreign-influenced business
20 entities pursuant to this section.



1 (j) A contribution made by a foreign national, foreign
2 corporation, or foreign-influenced business entity, or a
3 contribution made by any entity that received funds from a
4 foreign national, foreign corporation, or foreign-influenced
5 business entity in violation of subsection (c), shall escheat to
6 the Hawaii election campaign fund.

7 (k) This section shall not apply to entities engaged in
8 transporting cargo and subject to section 27 of the Merchant
9 Marine Act of 1920 (46 U.S.C. 55102).

10 (l) For the purposes of this section:

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

14 "Earmarked" means a designation or instruction, whether
15 direct or indirect, express or implied, oral or written, that
16 results in all or any part of the contribution or donation being
17 expended in a manner that would be prohibited by this section if
18 made by a foreign national, foreign corporation, or
19 foreign-influenced business entity."

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



1 "§11-393 Identification of certain top contributors to
2 noncandidate committees making only independent expenditures.

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

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



- 1 (2) If a noncandidate committee is able to identify only
2 one top contributor who made contributions for the
3 purpose of funding the advertisement, the additional
4 notice shall start with the words, "The top
5 contributor for this advertisement is", followed by
6 the name of the top contributor;
- 7 (3) If a noncandidate committee is unable to identify any
8 top contributors who made contributions for the
9 purpose of funding the advertisement, the additional
10 notice shall start with the words, "The three top
11 contributors for this noncandidate committee are",
12 followed by the names of the three top contributors
13 who made the highest aggregate contributions to the
14 noncandidate committee; and
- 15 (4) If there are no top contributors to the noncandidate
16 committee, the noncandidate committee shall not be
17 subject to this section.
- 18 In no case shall a noncandidate committee be required to
19 identify more than three top contributors pursuant to this
20 section.



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

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



1 when including a list of top contributors in an advertisement of
2 short duration constitutes a hardship to a noncandidate
3 committee under this subsection.

4 (d) A noncandidate committee shall obtain a statement of
5 certification, signed under oath as defined in, and on a form as
6 described in, section 710-1000, from each top contributor
7 required to be listed in an advertisement pursuant to this
8 section avowing under penalty of law that, after due inquiry,
9 none of the funds contributed by the top contributor were
10 derived from a foreign national, foreign corporation, or
11 foreign-influenced business entity. If a noncandidate committee
12 does not receive a statement of certification from a top
13 contributor, the advertisement shall include the following
14 statement: "The following top contributor(s) did not provide
15 certification regarding foreign influence". A noncandidate
16 committee may rely on a statement of certification provided by a
17 top contributor unless the noncandidate committee has actual
18 knowledge that the statement of certification is false.

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



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

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

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

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

19 SECTION 8. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



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



Report Title:

CSC; Campaign Finance; Foreign Nationals; Foreign Corporations; Foreign-Influenced Business Entities; Exemption; Cargo Carriers

Description:

Prohibits foreign nationals, foreign corporations, and foreign-influenced business entities from making contributions, expenditures, electioneering communications, or donations for election purposes. Requires every for-profit business entity that contributes or expends funds in a state election to certify that the entity was not a foreign corporation or foreign-influenced business entity when the contribution or expenditure was made. 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 nationals, foreign corporations, or foreign-influenced business entities. Exempts entities engaged in transporting cargo and subject to section 27 of the Merchant Marine Act of 1920. Effective 7/1/3000. (HD2)

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