

HOUSE OF REPRESENTATIVES

H.B. NO.

2738

THIRTIETH LEGISLATURE, 2020

H.D. 1

STATE OF HAWAII

S.D. 2

A BILL FOR AN ACT

RELATING TO CAMPAIGN FINANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the State has a compelling interest in securing its democratic self-governance from foreign influence.

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

The legislature recognizes that several states and municipalities, including Alaska; Connecticut; Massachusetts; New York City; and St. Petersburg, Florida, have enacted or are considering enacting legislation to limit foreign corporate spending and to protect the integrity of their elections from foreign corporate influence.

The purpose of this Act is to protect the State's democratic self-governance by:

(1) Prohibiting foreign nationals and foreign corporations from making independent expenditures;

(2) Requiring every corporation that contributes or expends funds in a State election to file a statement of certification regarding its status as a foreign corporation; and

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

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

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

"Foreign corporation" means a corporation that meets at least one of the following conditions:

(1) A single foreign owner holds, owns, controls, or otherwise has direct or indirect beneficial ownership of one per cent or more of the total equity, outstanding voting shares, membership units, or other applicable ownership interests of the corporation;

(2) Two or more foreign owners, in aggregate, hold, own, control, or otherwise have direct or indirect beneficial ownership of five per cent or more of the total equity, outstanding voting shares, membership units, or other applicable ownership interests of the corporation; or

(3) A foreign owner participates directly or indirectly in the corporation's decision-making process with respect to the corporation's political activities in the United States.

"Foreign investor" means a person or entity that:

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

(2) Is:

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

(B) A foreign national.

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

"Foreign owner" means:

(1) A foreign investor; or

(2) A corporation wherein a foreign investor holds, owns, controls, or otherwise has directly or indirectly acquired a beneficial ownership of equity or voting shares in an amount that is equal to or greater than fifty per cent of the total equity or outstanding voting shares."

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

"[§11-356] Contributions and expenditures by a foreign national or foreign corporation;

prohibited. (a) Except as provided in subsection [(b);] (c), no contributions or expenditures shall be made to or on behalf of a candidate, candidate committee, or noncandidate committee, by a foreign national or foreign corporation, including a domestic subsidiary of a foreign corporation, a domestic corporation that is owned by a foreign national, or a local subsidiary where administrative control is retained by the foreign corporation, and in

the same manner prohibited under [2] title 52 United States Code section [441e] 30121 and title 11 Code of Federal Regulations section 110.20, as amended.

(b) No independent expenditures shall be made by a foreign national or foreign corporation.

~~(b)~~ (c). A foreign-owned domestic corporation may make contributions if:

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

(2) The contributions are domestically-derived.

(d) Every corporation that contributes to or makes an expenditure on behalf of a candidate, candidate committee, or noncandidate committee, within seven business days after making the contribution or expenditure, shall file with the campaign spending commission a statement of certification signed by the corporation's chief executive officer avowing under penalty of perjury that, after due inquiry, the corporation was:

(1) Not a foreign corporation on the date the expenditure or contribution was made; or

(2) A foreign corporation on the date the expenditure or contribution was made, but that:

(A) No foreign national or foreign corporation participated in the corporation's election-related activities, including decisions concerning contributions, expenditures, or the administration of a candidate committee or noncandidate committee; or

(B) The funds from which the foreign corporation made the contribution or expenditure were domestically-derived.

(e) Every corporation that makes an independent expenditure, within seven business days after making the independent expenditure, shall file with the campaign spending commission a statement of certification signed by the corporation's chief executive officer avowing under penalty of perjury that, after due inquiry, the corporation was not a foreign corporation on the date the independent expenditure was made.

(f) For the purposes of this section, "corporation" means a corporation, company, limited liability company, limited partnership, business trust, business association, or other legal entity."

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

"[§11-393] Identification of certain top contributors to noncandidate committees making only independent expenditures. (a) An advertisement shall contain an additional notice in a prominent location immediately after or below the notices required by section 11-391, if the advertisement is broadcast, televised, circulated, or published, including by electronic means, and is paid for by a noncandidate committee that certifies to the commission that it makes only independent expenditures. This additional notice shall start with the words, "The three top contributors for this advertisement are", followed by the names of the three top contributors, as defined in subsection ~~(e)~~ (f), who made the highest aggregate contributions to the noncandidate committee for the purpose of funding the advertisement; provided that:

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

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

(3) If a noncandidate committee is unable to identify any top contributors who made contributions for the purpose of funding the advertisement, the additional notice shall start with the words, "The three top contributors for this noncandidate committee are", 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) A noncandidate committee shall obtain a statement of certification from each top contributor required to be listed in an advertisement pursuant to this section avowing under penalty of perjury that, after due inquiry, none of the funds contributed by the top contributor were derived from a foreign corporation. If a noncandidate committee does not receive a statement of certification from a top contributor, the advertisement shall include the following statement: "Some of the funds used to pay for this message may have been provided by foreign corporations." A noncandidate committee shall be entitled to rely on a statement of certification provided by a top contributor unless the noncandidate committee has actual knowledge that the statement of certification is false.

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

~~(e)~~ (f). 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. Nothing in this Act shall be construed to diminish or infringe upon any right protected under the First Amendment of the Constitution of the United States or conflict with any federal statute or regulation.

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

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

SECTION 8. This Act shall take effect upon its approval.

Report Title:

Campaign Finance; Foreign Corporations

Description:

Prohibits foreign nationals and foreign corporations from making independent expenditures. Requires every corporation 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. (SD2)

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