

CHAPTER 1

Section 1. Section [STATUTE] is enacted to read:

Certification regarding prohibited sources of funding; no prohibited sources of funding to ballot initiative or referendum committees; record keeping requirements; prohibited influence by a foreign national.

- A) Upon [creating, registering, or forming] a ballot initiative or referendum committee, the treasurer must file an accompanying certification that no preliminary activity was funded by prohibited sources, whether directly or indirectly.
- B) After a ballot initiative or referendum committee has been [created, registered or formed], the committee may not, knowingly or willfully receive, solicit, or accept contributions or expenditures from a prohibited source, whether directly or indirectly.
- C) The periodic campaign finance report form shall be amended to require the ballot initiative or referendum committee to affirm it has not knowingly or willfully received, solicited, or accepted contributions or expenditures from a prohibited source.
- D) Any [person] who makes an independent expenditure in support of or in opposition to a ballot measure committee, as well as any ballot initiative or referendum committee shall keep records of any contribution or expenditure and retain such records for [state statute of limitations for campaign finance] years from the date of receipt of said contribution or expenditure.

Section 2. Section [STATUTE] is enacted to read:

Certification regarding foreign funding required for contributions to ballot initiative or referendum committees or [independent expenditures] supporting or opposing ballot initiatives or referendums; presumption of evading foreign funding ban.

- A) Upon a ballot initiative or referendum committee's receipt of a contribution, the Treasurer must obtain from the donor an affirmation that the donor is not a foreign national and has not knowingly or willfully accepted funds aggregating in excess of \$100,000.00 from one or more prohibited sources within the four-year period immediately preceding the date the contribution is made.
- B) The existing campaign finance report form shall be amended to require the Treasurer of a ballot initiative or referendum committee to affirm that the donor associated with each contribution is not a foreign national and has not knowingly or willfully received, solicited, or accepted, whether directly or indirectly, contributions or expenditures from one or more prohibited sources aggregating in excess of \$100,000.00 within the four-year period immediately preceding the date of the expenditure.

- C) Within forty-eight hours [or currently applicable pre-election independent expenditure reporting period] of making one or more independent expenditures supporting or opposing a ballot initiative or referendum, the entity making the expenditure(s) must certify to the [Secretary of State or Campaign Finance Authority] that it has not knowingly or willfully accepted funds aggregating in excess of \$100,000.00 from one or more prohibited sources within the four-year period immediately preceding the date the expenditure is made and that it will not do so through the remainder of the calendar year in which the ballot initiative or referendum will appear on the ballot.
- D) The existing [independent expenditure] campaign finance report form shall be amended to require the entity making the expenditure to affirm that it has not knowingly or willfully accepted funds aggregating in excess of \$100,000.00 from one or more prohibited sources within the four-year period immediately preceding the date the expenditure is made.
- E) Any determination that an entity filing one or more certification(s) pursuant to subsections (A) and (C) of this Section has accepted funds in aggregate from one or more prohibited sources in excess of the threshold within the applicable four-year period immediately preceding the contribution or independent expenditure at issue shall create a presumption that the entity has violated this statute.

Section 3. Section [STATUTE] is enacted to read:

Prohibited influence by a foreign national.

- A) A foreign national may not direct, dictate, control or directly or indirectly participate in the decision-making process of any person with regard to that person's activities to influence a ballot initiative or referendum, such as decisions concerning the making of contributions or expenditures to influence a ballot initiative or referendum.
- B) A foreign national may not solicit, directly or indirectly, the making of a donation, contribution or expenditure by another person to influence a ballot initiative or referendum.
- C) Nothing in this Act shall be deemed to create or eliminate any existing donor disclosure rights or duties beyond those specifically enumerated in this Section.

Section 4. Section [STATUTE] is enacted to read:

Enforcement and Cause of Action.

- A) The [campaign finance enforcement agency or officer] may bring a civil action to enforce this Act.
 - 1) A committee or person alleged to have violated this Act shall be provided a full opportunity of notice, discovery, and an opportunity to be heard before being found liable for a violation of this Act.
 - 2) In all actions brought pursuant to Section 4 (A), the burden of proof shall be on the [campaign finance enforcement agency or officer].
 - i. Prior to discovery, court shall set a hearing to determine if there is probable cause to believe that a committee or person has violated the Act.
 - ii. If, after the hearing, the court determines that no probable cause exists to believe that a violation of the Act has occurred, the court shall enter an order of dismissal [with prejudice].

- iii. If, after the hearing, the court determines that probable cause does exist to believe that a violation of the Act has occurred, the court shall enter an order to that effect and the case should proceed to trial on an expedited basis.
 - 1. Subject to the provisions in Section 5 of this Act, the entity alleged to have violated this provision may, at a time to be determined by the court prior to the scheduling of trial, present evidence sufficient to rebut the probable cause finding by making an ex parte presentation of records to the court for in camera review.
- iv. A losing party under Section 4 (A)(2)(iii) has the right to:
 - 1. An interlocutory expedited appeal; and
 - 2. A stay of proceedings in the trial court.
- B) Within [30] days of a finding that a committee has violated the Act, the committee shall refund the contribution to the original contributor. In the event of an appeal, the contribution shall be placed in escrow, after which the funds shall be disbursed in accordance with the final order.
 - 1) If the committee is unable to return the funds, the directors, officers or executive members of the committee shall be liable in their personal capacity, jointly and severally, for the refund of said funds.
- C) Within [30] days of a finding that an [independent expenditure filer] has violated the Act, the entity making the independent expenditure shall disgorge to [the campaign finance authority] funds in an amount equal to the reported cost of the independent expenditure. If the entity is unable to disgorge the requisite funds, the directors, officers or executive members of the entity shall be liable in their personal capacities, jointly and severally, for the payment of the amount due. In the event of an appeal, the funds subject to disgorgement shall be placed in escrow, after which they shall be disbursed in accordance with the final order.
- D) If any lobbyist violates any of the provisions of this chapter, the lobbyist's registration may be revoked or suspended and the lobbyist may be enjoined from receiving compensation or making expenditures for lobbying.
- E) If a [campaign finance enforcement agency or officer] prevails in an action brought under Section 4(A), the court shall award:
 - 1) Injunctive relief sufficient to prevent the defendant from violating this subchapter or engaging in acts that aid or abet violations of this subchapter; and
 - 2. Statutory damages up to twice the amount of the prohibited contribution or expenditure.
- F) In addition to the penalties in [] of this section and any other remedies provided by law, if the court finds a knowingly or willful violation of this Act, the court may assess a penalty of up to three times the statutory damages.

Section 5. Section [STATUTE] is enacted to read:

Restrictions on Collection and Release of Donor Information; Penalty for violation.

- (A) Lawful donors to a tax-exempt organization possess a right of privacy in their donations. Any investigation of an alleged violation of this Act or a lawful court order in an action

brought under Section 4(A) must occur in a manner that shields the identity of lawful donors as much as possible. No [state, local governmental entity, court, or officer of the court], may collect or require the submission of information on the identity of any donor to a tax-exempt organization other than those directly related to an alleged violation of this Act. [{or, if state has adopted the Personal Privacy Protection Act,} Any collection or required submission of information by any {state, local government entity, court, or officer of the court} regarding the identity of any donor to a tax-exempt organization beyond that permitted by this Act shall be deemed a violation of the Personal Privacy Protection Act.]

- (B) No [state, local governmental entity, court, or officer of the court] may disclose to the public, or another government official not directly involved in the investigation, information revealing the identity of any donor to a tax-exempt organization, unless the information is regarding the identity of a donor that engaged in conduct prohibited by the Act after a final determination has been made that the donor violated the Act. Knowing or willful violations of this subsection shall be punishable as a [class X misdemeanor]. [{or, if state has adopted the Personal Privacy Protection Act,} Any public disclosure of information revealing the identity of any donor to a tax-exempt organization by {state, local government entity, court, or officer of the court} incident to this {statute} shall be deemed a violation of the Personal Privacy Protection Act, unless the information is regarding the identity of a donor that engaged in conduct prohibited by the Act after a final determination has been made that the donor violated the Act.]

Section 6. Section [STATUTE] is enacted to read:

Definitions.

For purposes of this chapter, the following definitions apply:

- A) “Contribution” means a gift, subscription, loan, advance or deposit of money or anything of value given to influence an election, the payment by any person of compensation for the personal services of another person if those services are rendered without charge to a [political committee and/or organization] for any purpose, and includes an agreement to make a contribution [OR refer to existing state contribution definition].
- B) “Directly or indirectly” means acting either alone or jointly with, through, or on behalf of any other ballot initiative or referendum committee, political committee, organization, person, or other entity.
- C) “Expenditure” means a purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any person for the purpose of influencing an election, and includes an agreement to make an expenditure [OR refer to existing state expenditure definition].
- D) “Foreign national” [has the same meaning as in 52 U.S. Code § 30121(b)] means:
 - i. An individual who is not a citizen or lawful permanent resident of the United States;
 - ii. A government, or subdivision, of a foreign country or municipality thereof;
 - iii. A foreign political party;
 - iv. Any entity, such as a partnership, association, corporation, organization, or other combination of persons, that is organized under the laws of, or has its principal place of business in, a foreign country; or

- v. Any U.S. entity, such as a partnership, association, corporation, or organization, which is wholly, or majority owned by any foreign national, unless (1) any contribution or expenditure it makes derives entirely from funds generated by the U.S. entity's U.S. operations; and (2) all decisions concerning the contribution or expenditure are made by individuals who are U.S. citizens or permanent residents, except for setting overall budget amounts.
- E) "Ballot Initiative or Referendum" means a question, other than the nomination or election of a candidate to a public office, which has been:
- (1) approved by a political subdivision or the [name of legislature] or is required by law to be placed before the voters of the political subdivision by a [name of appropriate election official] or to be placed before the voters by the [name of appropriate election official]; or
 - (2) initiated or referred by a citizen petition as authorized by [cite state constitutional or statutory provisions] and placed before the voters of the political subdivision by a [name of appropriate election official] or to be placed before the voters by the [name of appropriate election official]
- F) "Person" includes an individual, partnership, association, corporation, organization, political committee, or any other combination or group of individuals.
- G) "Prohibited sources" include contributions from or expenditures by a foreign national.
- H) "Preliminary activity" includes but is not limited to, conducting a poll, drafting ballot measure language, focus group, telephone calls, and travel.
- I) "Tax-Exempt Organization" means an organization which is described in section 501(c) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of such Code. Nothing in this subsection may be construed to treat a political organization under section 527 of such Code as a tax-exempt organization for purposes of this section.