The Prohibiting Foreign Funding from Ballot Measures Act

Section 1. Section [ ] is enacted to read:

Initial certification regarding foreign funding; No foreign funding to ballot initiative or referendum committees.

A) In its [statement of organization] the [filing officer] for a [ballot initiative or referendum] committee, shall certify that no preliminary activity was funded by one or more foreign nationals, whether directly or indirectly.

B) A [ballot initiative or referendum] committee shall not knowingly or willfully receive, solicit, or accept [direct or in-kind] contributions from one or more foreign nationals, whether directly or indirectly.

Section 2. Section [ ] 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 receipt of a [direct or in-kind] contribution, the [filing officer] for a [ballot initiative or referendum] committee shall obtain from the donor a written 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 foreign nationals within the four-year period immediately preceding the date the contribution is made. These affirmations shall be retained with the committee's records for [retention period].

B) The [periodic] campaign finance report form shall require the [filing officer] for [a ballot initiative or referendum] committee to affirm it has not knowingly or willfully received, solicited, or accepted [direct or in-kind] contributions from a foreign national.

C) The periodic campaign finance report form for [a ballot initiative or referendum committee] shall require the [filing officer] to affirm that the donor associated with each contribution is not a foreign national and that the donor has not knowingly or willfully received, solicited, or accepted, whether directly or indirectly, [direct or in-kind] contributions from one or more foreign nationals aggregating in excess of [$100,000.00] within the four-year period immediately preceding the date of the contribution.

D) A person making one or more independent expenditures [required to report according to state campaign finance law] supporting or opposing a [ballot initiative or referendum], shall affirm in its campaign finance report form that the person making the expenditure has not knowingly or willfully accepted funds aggregating in excess of [$100,000.00] from one or more foreign nationals within the four-year period immediately preceding the date the expenditure is made and will not do so through the date of the election in which the [ballot initiative or referendum] will appear on the ballot.

E) A determination that a person or committee subject to subsections (A), (C), and (D) of this Section has accepted funds in aggregate from one or more foreign nationals in excess of [$100,000.00] within the applicable four-year period immediately preceding the contribution or independent expenditure at issue shall create a presumption that the person or committee has violated this statute.

F) 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 3. Section [ ] 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 regarding 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.

Section 4. Section [ ] is enacted to read:

Enforcement and cause of action.

A) The [attorney general] 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 [attorney general].

a) Prior to discovery, the court shall set a hearing to determine if there is probable cause to believe that a committee or person has violated the Act.

b) 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].

c) 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.

d) 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.

e) A losing party under Section 4 (A)(2)(c) has the right to:

i. An interlocutory expedited appeal; and

ii. 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 person or committee making the independent expenditure shall disgorge to [the state general fund] 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 [attorney general] 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 [ ] 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 [ ] 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:

1) An individual who is not a citizen or lawful permanent resident of the United States;
2) A government, or subdivision, of a foreign country or municipality thereof;
3) A foreign political party;
4) 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
5) 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) "Preliminary activity" includes but is not limited to, conducting a poll, drafting ballot measure language, focus group, telephone calls, and travel.

H) "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.