

HOUSE BILL NO. 818

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CAMPAIGN FINANCE LAWS; PROHIBITING A
FOREIGN NATIONAL FROM INTERFERING IN STATEWIDE BALLOT ISSUES; PROVIDING
INVESTIGATORY AUTHORITY TO THE COMMISSIONER OF POLITICAL PRACTICES OR AN
APPROPRIATE COUNTY ATTORNEY; CREATING A CAUSE OF ACTION; PROHIBITING A
CONTRIBUTION, EXPENDITURE, OR INDEPENDENT EXPENDITURE USING FUNDS RECEIVED FROM A
FOREIGN NATIONAL; PROVIDING DEFINITIONS; PROVIDING PENALTIES; AND AND AMENDING
SECTIONS 13-37-128, 13-37-130, 13-37-201, 13-37-501, 13-37-502, AND 13-37-503, MCA; AND PROVIDING
AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. ~~Prohibition on foreign national interference in statewide ballot~~
~~issues.~~ (1) A foreign national may not, directly or indirectly through any person or entity, do the following:

(a) ~~make a contribution, expenditure, or independent expenditure in support of or in opposition to a~~
~~statewide ballot issue, regardless of whether the ballot issue has been certified to appear on the ballot;~~

(b) ~~make a disbursement for the direct cost of producing or airing an~~ ELECTION COMMUNICATION OR
AN ~~electioneering communication; or~~

(c) ~~make~~ OR SOLICIT ~~a contribution to a candidate, campaign committee, political action committee,~~
~~political contributing entity, legislative campaign fund, state candidate fund, political party, separate segregated~~

fund, or committee created to support or to oppose a ballot issue or, to the maximum extent permitted by law and by the constitutions of the United States and Montana, to a continuing association; OR

(D) DIRECT, DICTATE, CONTROL, OR DIRECTLY OR INDIRECTLY PARTICIPATE IN THE DECISIONMAKING PROCESS OF ANY PERSON OR COMMITTEE WITH REGARD TO THAT PERSON'S OR COMMITTEE'S ACTIVITIES TO INFLUENCE A STATEWIDE BALLOT ISSUE.

(2) A person, individual, candidate, campaign committee, political action committee, political contributing entity, legislative campaign fund, state candidate fund, political party, separate segregated fund, or committee created to support or to oppose a ballot issue and, to the maximum extent permitted by law and by the constitutions of the United States and Montana, a continuing association may not, directly or indirectly through any other person or entity, knowingly do the following:

(a) solicit, accept, or receive any funds from a foreign national for any purpose described in this section; or

(b) make a contribution, expenditure, or independent expenditure using any funds the person knows were received from a foreign national for any purpose described in this section.

(3) A person may not knowingly aid or facilitate a violation of subsection (1) or (2).

(4) (A) UPON RECEIPT OF A CONTRIBUTION BY A POLITICAL COMMITTEE CREATED TO SUPPORT OR TO OPPOSE A BALLOT ISSUE, THE COMMITTEE TREASURER SHALL OBTAIN FROM THE DONOR AN AFFIRMATION THAT THE DONOR IS NOT A FOREIGN NATIONAL AND HAS NOT KNOWINGLY ACCEPTED FUNDS AGGREGATING IN EXCESS OF \$100,000 FROM ONE OR MORE PROHIBITED SOURCES WITHIN THE 4-YEAR PERIOD IMMEDIATELY PRECEDING THE DATE THE CONTRIBUTION IS MADE.

(B) RECORDS OF THE DONOR AFFIRMATIONS RECEIVED MUST BE INCLUDED IN THE TREASURER'S RECORDKEEPING OBLIGATIONS UNDER 13-37-207 AND 13-37-208.

(5) THE PERIODIC CONTRIBUTIONS AND EXPENDITURES REPORTS FILED BY A POLITICAL COMMITTEE CREATED TO SUPPORT OR TO OPPOSE A BALLOT ISSUE UNDER 13-37-225 THROUGH 13-37-229 MUST BE AMENDED TO INCLUDE AN AFFIRMATION, SUBMITTED AS AN ATTACHMENT TO EACH FINANCE REPORT, THAT THE COMMITTEE HAS NOT KNOWINGLY RECEIVED, SOLICITED, OR ACCEPTED CONTRIBUTIONS OR EXPENDITURES FROM A PROHIBITED SOURCE.

(6) (A) ANY PERSON OR ENTITY MAKING ONE OR MORE INDEPENDENT EXPENDITURES IN SUPPORT OF OR IN OPPOSITION TO A BALLOT ISSUE SHALL SUBMIT AN AFFIRMATION TO THE COMMISSIONER OF POLITICAL PRACTICES THAT IT

~~HAS NOT KNOWINGLY ACCEPTED FUNDS AGGREGATING IN EXCESS OF \$100,000 FROM ONE OR MORE PROHIBITED SOURCES WITHIN THE 4-YEAR PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE EXPENDITURE IS MADE AND THAT IT WILL NOT DO SO THROUGH THE DATE OF THE ELECTION IN WHICH THE BALLOT ISSUE WILL APPEAR ON THE BALLOT.~~

~~(B) — THIS AFFIRMATION MUST BE FILED AS AN ATTACHMENT AT THE SAME TIME AS THE PERSON 'S OR ENTITY 'S MANDATORY EXPENDITURE REPORT REQUIRED UNDER 13-37-226.~~

~~(7) — ANY DETERMINATION THAT AN ENTITY FILING ONE OR MORE CERTIFICATIONS PURSUANT TO SUBSECTION (4), (5), OR (6) HAS ACCEPTED FUNDS IN AGGREGATE FROM ONE OR MORE PROHIBITED SOURCES IN EXCESS OF THE THRESHOLD WITHIN THE APPLICABLE 4 - YEAR PERIOD PRECEDING THE CONTRIBUTION OR INDEPENDENT EXPENDITURE AT ISSUE CREATES A PRESUMPTION THAT THE ENTITY HAS VIOLATED THIS STATUTE.~~

~~(4)(8) — The commissioner or an appropriate county attorney shall conduct an investigation in consultation with the secretary of state:~~

~~(a) — if the governor, attorney general, or secretary of state submits a written request for an investigation of an alleged violation of this section to the commission or an appropriate county attorney; or~~

~~(b) — if an elector of this state files a complaint of an alleged violation of this section with the commissioner.~~

~~(5)(9) — Except as otherwise provided in this section, the commissioner or an appropriate county attorney may bring a civil action to enforce this section.~~

~~(6)(10) NOTHING IN THIS SECTION CREATES OR ELIMINATES EXISTING DONOR DISCLOSURE RIGHTS OR DUTIES BEYOND THOSE SPECIFICALLY ENUMERATED IN THIS SE C TION.~~

~~(11) — For the purposes of this section, THE FOLLOWING DEFINITIONS APPLY:~~

~~(A) — "BALLOT ISSUE" HAS THE SAME MEANING AS PROVIDED IN 13-1-101.~~

~~(B) — "CONTRIBUTION" HAS THE SAME MEANING AS PROVIDED IN 13-1-101.~~

~~(C) — "directly or indirectly 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.~~

~~(D) — " EXPENDITURE " HAS THE SAME MEANING AS PROVIDED IN 13-1-101.~~

~~(E) — "FOREIGN NATIONAL" HAS THE SAME MEANING AS PROVIDED IN 13-37-501.~~

(F) ~~"INDEPENDENT EXPENDITURE" HAS THE SAME MEANING AS PROVIDED IN 13-1-101.~~

(G) ~~"PERSON" HAS THE SAME MEANING AS PROVIDED IN 13-1-101.~~

(H) ~~"POLITICAL COMMITTEE" HAS THE SAME MEANING AS PROVIDED IN 13-1-101.~~

(I) ~~"PROHIBITED SOURCES" INCLUDES CONTRIBUTIONS FROM OR EXPENDITURES BY A FOREIGN NATIONAL.~~

Section 1. Section 13-37-128, MCA, is amended to read:

"13-37-128. Cause of action created. (1) A person who intentionally or negligently violates any of the reporting provisions of this chapter, a provision of 13-35-225, or a provision of Title 13, chapter 35, part 4, is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to \$500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

(2) A person who makes or receives a contribution or expenditure in violation of 13-35-227, 13-35-228, or this chapter or who violates 13-35-226 is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to \$500 or three times the amount of the unlawful contribution or expenditure, whichever is greater.

(3) A person who violates the provisions of 13-37-502 is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to \$500 or three times the amount of the unlawful disbursement, contribution, expenditure, or promise, whichever is greater.

(4) A person who violates the provisions of [section 1 (1), or (2), OR (3)] is liable in a civil action brought by the commissioner or an appropriate county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for a fine in the amount of up to \$500 or of three times the amount involved in the violation, whichever is greater.

(5) A person who violates the provisions of [section 1 (3)] is liable in a civil action brought by the commissioner or an appropriate county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 and is guilty of a misdemeanor and on conviction shall be fined \$500 as provided under 13-35-103. "

Section 3. Section 13-37-130, MCA, is amended to read:

1 ~~"13-37-130. — Limitation of action.~~ An action may not be brought under 13-37-128 and 13-37-129
2 more than 2 years after the occurrence of the facts that give rise to the action. No more than one judgment
3 against a particular defendant may be had on a single state of facts. The civil action created in 13-37-128 and
4 13-37-129 is the exclusive remedy for violation of the contribution, expenditure, and reporting provisions of this
5 chapter. ~~These~~ Except as provided under 13-37-128(5), these provisions are not subject to the misdemeanor
6 penalties of 13-35-103 but may be a ground for contest of election or removal from office as provided in 13-35-
7 106 (3) and Title 13, chapter 36."

8
9 **SECTION 4.** SECTION 13-37-201, MCA, IS AMENDED TO READ:

10 ~~"13-37-201. — Campaign treasurer.~~ (1) Except as provided in 13-37-206, each candidate, each political
11 committee, and each joint fundraising committee shall appoint one campaign treasurer and certify the full name
12 and complete address of the campaign treasurer pursuant to this section.

13 (2) — (a) A candidate shall file the certification within 5 days after becoming a candidate.

14 (b) — ~~Except as provided in subsection (2)(c), a political committee and a joint fundraising committee~~
15 ~~shall file the certification, which must include an organizational statement and the name and address of all~~
16 ~~officers, if any, within 5 days after it makes an expenditure or authorizes another person to make an~~
17 ~~expenditure on its behalf, whichever occurs first. A joint fundraising committee shall also provide a list of~~
18 ~~participants with the certification.~~

19 (c) — A political committee that is seeking to place a ballot issue before the electors shall file the
20 certification, including the information required in subsection (2)(b), within 5 days after the proposed issue is
21 submitted to the secretary of state under 13-27-214.

22 (3) — The certification of a candidate, political committee, or joint fundraising committee must be filed
23 with the commissioner.

24 (4) — A person or entity filing the certification required under this section for a political committee
25 provided in subsection (2) (c) or for a political committee organized to support or oppose a ballot issue shall
26 include, at the time of filing, an accompanying certification that no preliminary activity was funded by prohibited
27 sources, whether directly or indirectly, as those terms are defined in [section 1]. Preliminary activity includes
28 but is not limited to conducting a poll, drafting ballot measure language, focus groups, telephone calls, and

1 travel."

2

3 NEW SECTION. SECTION 1. PROHIBITION ON FOREIGN NATIONAL INTERFERENCE IN STATEWIDE BALLOT

4 ISSUES. (1) It is unlawful for a foreign national, directly or through an intermediary, to make a disbursement for
5 an electioneering communication, a contribution, or an expenditure, or to make an express or implied promise
6 to make a contribution or an expenditure, in connection with any statewide ballot issue.

7 (2) It is unlawful for a person to:

8 (a) solicit, accept, or receive any funds from a foreign national for any purpose described in
9 subsection (1); or

10 (b) make a contribution, expenditure, or independent expenditure using any funds the person
11 knows were received from a foreign national for any purpose described in this section.

12 (3) (a) Upon receipt of a contribution by a political committee created to support or to oppose a
13 ballot issue, the committee treasurer shall obtain from the donor an affirmation that the donor is not a foreign
14 national.

15 (b) Records of the donor affirmation received must be included in the treasurer's recordkeeping
16 obligations under 13-37-207 and 13-37-208.

17

18 SECTION 2. SECTION 13-37-501, MCA, IS AMENDED TO READ:

19 **"13-37-501. Definitions.** As used in this part, the following definitions apply:

20 (1) "Entity" means a partnership, association, limited liability company, joint venture, corporation,
21 or any other legal or commercial organization, or a combination of entities.

22 (2) "Foreign national" means:

23 (a) a government of a foreign country;

24 (b) a political party of a foreign country;

25 (c) an entity located outside of the United States unless that entity:

26 (i) is organized under or created under federal law, state law, or the law of another place subject
27 to the jurisdiction of the United States; and

28 (ii) has its principal place of business within the United States;

- 1 (d) an entity that:
- 2 (i) is organized under the laws of a foreign country; or
- 3 (ii) has its principal place of business in a foreign country; ~~and~~
- 4 (e) an individual who is not lawfully admitted for the privilege of residing permanently in the United
- 5 States as an immigrant in accordance with immigration laws and who is not:
- 6 (i) a citizen of the United States; or
- 7 (ii) a person who, though not a citizen of the United States, owes permanent allegiance to the
- 8 United States; and
- 9 (f) any U.S. entity, such as a partnership, association, corporation, or organization, that is wholly
- 10 or majority owned by any foreign national, unless:
- 11 (i) any contribution or expenditure it makes derives entirely from funds generated by the U.S.
- 12 entity's U.S. operations; and
- 13 (ii) all decisions concerning the contribution or expenditure are made by individuals who are U.S.
- 14 citizens or permanent residents, except for setting overall budget amounts."
- 15

16 **SECTION 3.** Section 13-37-502, MCA, is amended to read:

17 **"13-37-502. Prohibition on foreign national interference in election.** (1) It is unlawful for a foreign

18 national, directly or through an intermediary, to make a disbursement for an electioneering communication, a

19 contribution, or an expenditure, or to make an express or implied promise to make a contribution or an

20 expenditure, in connection with any candidate election.

- 21 (2) It is unlawful for a person to:
- 22 (a) solicit, accept, or receive a contribution, expenditure, or disbursement described in subsection
- 23 (1) from a foreign national; or
- 24 (b) make a contribution, expenditure, or independent expenditure using any funds the person
- 25 knows were received from a foreign national for any purpose described in this section.

26 (3) To the extent that a potential violation of this section also violates 52 U.S.C. 30121 or 11 CFR

27 110.20, investigation and enforcement of the matter must be referred to the federal election commission. The

28 commissioner or a county attorney may not bring an enforcement action regarding the portion of the matter that

1 also violates 52 U.S.C. 30121 or 11 CFR 110.20."

2

3 **Section 4.** Section 13-37-503, MCA, is amended to read:

4 **"13-37-503. Penalties.** A person who violates 13-37-502 or [section 1] is liable in a civil action
5 pursuant to 13-37-128."
6

7 NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an
8 integral part of Title 13, chapter 37, part 5, and the provisions of Title 13, chapter 37, part 5, apply to [section 1].
9

10 NEW SECTION. Section 8. **SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE
11 SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS
12 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID
13 APPLICATIONS.

14

15 NEW SECTION. Section 9. **EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

16 - END -