

PROHIBIT CONTRIBUTIONS BY FOREIGN NATIONALS TO PROMOTE OR DEFEAT A BALLOT QUESTION

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House Bill 5197 as introduced
Sponsor: Rep. Rachelle Smit
Committee: Election Integrity
Complete to 11-3-25

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5197 would amend the Michigan Campaign Finance Act to do the following:

- Prohibit a foreign national from contributing toward the qualification, passage, or defeat of a ballot question.
- Prohibit a ballot question committee from knowingly accepting a contribution from a foreign national and prescribe a civil fine for a violation.
- Require certain affirmations that the above prohibitions have not been violated.
- In an investigation of a violation, require the donor lists of tax-exempt organizations to be confidential except for information directly related to the violation.

Foreign nationals

The bill would prohibit a *foreign national* from doing any of the following to promote or defeat a ballot question or to qualify a question for placement on the ballot:

- Making a contribution, expenditure, or independent expenditure.
- Directly or indirectly soliciting a donation, contribution, or expenditure by another.
- Directing or controlling a person or directly or indirectly participating in a person's decision-making process.

Foreign national would mean any of the following:

- An individual who is not a United States citizen or lawful permanent resident.
- A government or government subdivision of a foreign country.
- A municipality of a foreign country's government or government subdivision.
- A foreign political party.
- An entity or business that is organized under the laws of a foreign country or that has its principal place of business in a foreign country.

For purposes of the above provisions, *foreign national* would not include a United States entity or business that is wholly or majority owned by a foreign national as long as both of the following apply:

- The contribution or expenditure made by the entity or business derives entirely from funds generated by its United States operations.
- All decisions concerning the contribution or expenditure (except setting overall budget amounts) are made by individuals who are United States citizens or permanent residents.

The bill also would prohibit a foreign national from making a contribution or donation to another person or entity with the express or implied condition that all or part of it be used for a prohibited purpose described above.

In addition, a committee under the act, political party, candidate, individual, or separate segregated fund could not knowingly do either of the following, either directly or indirectly through another person or entity:

- Solicit, accept, or receive money from a foreign national for a prohibited purpose described above.
- Make a contribution, expenditure, or independent expenditure using money received from a foreign national for a prohibited purpose described above.

Ballot question committees

The bill would do all of the following with regard to ballot question committees:

- Prohibit a ballot question committee from knowingly or willfully receiving, soliciting, or accepting contributions or expenditures from a foreign national, whether directly or indirectly.
- Require a ballot question committee to return a contribution it is prohibited from receiving under the above provision no later than 30 business days after receiving it.
- Require a ballot question committee, after it receives a contribution, to obtain from the donor an affirmation of both of the following:
 - The donor is not a foreign national.
 - The donor has not knowingly or willfully received, solicited, or accepted contributions or expenditures of more than \$100,000 in aggregate from foreign nationals in the four years immediately preceding the date of the contribution.

Under the bill, a person that violates any of the three provisions above would be subject to a civil fine that could not exceed “double the amount of the undisclosed contribution.”

Statements of organization

The bill would require the statement of organization of a ballot question committee to include (in addition to currently required information) a certification that a foreign national did not directly or indirectly fund any preliminary activity, such as polling, focus groups, telephone calls, drafting ballot measure language, or travel.

Campaign statements

The bill would require a campaign statement of a ballot question committee to include (in addition to currently required information) an affirmation of both of the following:¹

- The committee has not knowingly or willfully received, solicited, or accepted contributions or expenditures from a foreign national.
- The donor associated with each contribution is not a foreign national and has not knowingly or willfully received, solicited, or accepted contributions or expenditures in an aggregate amount of more than \$100,000 from foreign nationals in the four years immediately preceding the date of their contribution.

Independent expenditures

The act generally provides that a person (other than a committee under the act) that makes an independent expenditure of more than \$100 in a calendar year to advocate for or against a candidate or ballot question must file a report of the expenditure within 10 days with the clerk of their county of residence.

¹ The act now provides that an individual responsible for a ballot committee’s record keeping, report preparation, or report filing who knowingly files an incomplete or inaccurate campaign statement or report is subject to a civil fine of the greater of either the amount of the undisclosed contribution or up to \$1,000.

Under the bill, if the independent expenditure was made to advocate for the qualification, passage, or defeat of a statewide ballot question, this report would have to include an affirmation of both of the following:

- The person making the expenditure has not knowingly or willfully accepted more than \$100,000 in aggregate from foreign nationals in the four years immediately preceding the date of the expenditure.
- The person will not knowingly or willfully accept more than \$100,000 in aggregate from foreign nationals through the date of the election in which the ballot question will appear on the ballot.

Nondisclosure of donors

Finally, the bill would prohibit the disclosure of the information or identity of donors to a tax-exempt organization² that is involved or implicated in an investigation or proceeding conducted by the secretary of state or attorney general for a complaint related to a violation of the act by a foreign national, except for information directly related to the alleged violation. Donor information prohibit from being disclosed under these provisions would also be exempt from disclosure under the Freedom of Information Act (FOIA).

Sanctions

A person that violates the Michigan Campaign Finance Act is subject to a civil fine of up to \$1,000 for each violation unless the act specifically provides otherwise.

MCL 169.207 et seq.

FISCAL IMPACT:

House Bill 5197 would have an indeterminate fiscal impact on the state and local units of government. The fiscal impact would depend on the number of persons that violate provisions of the bill and are subsequently ordered to pay a civil fine. Revenue collected from payment of civil fines is used to support public and county law libraries. Also, under section 8827(4) of the Revised Judicature Act, \$10 of the civil fine would be required to be deposited into the state's Justice System Fund, which supports various justice-related endeavors in the judicial branch and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. Because there is no practical way to determine the number of violations that will occur under provisions of the bill, an estimate of the amount of additional revenue the state would collect, revenue for libraries, or costs to local courts cannot be made.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

² Under section 501(c) of the federal Internal Revenue Code.