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SUMMARY

- Prohibits a foreign national from knowingly making, or promising to make, a campaign contribution or expenditure or a disbursement for the direct cost of producing or airing an electioneering communication, except for an independent expenditure regarding a local ballot issue.
- Prohibits individuals and certain entities from knowingly soliciting or accepting a contribution or expenditure from a foreign national and from making a contribution or expenditure using funds the person knows were received from a foreign national for political purposes.
- Prohibits any person from knowingly aiding or facilitating a violation described above.
- Prohibits a lawful permanent U.S. resident, also known as a green card holder, from making contributions or expenditures regarding ballot issues or candidates.
- Provides criminal and financial penalties for violations of the act.
- Gives the Attorney General exclusive authority to investigate and prosecute violations of the act.

DETAILED ANALYSIS

Foreign national campaign spending

The act leaves in place the previously existing statute governing campaign spending by foreign nationals, which is located in R.C. 3517.13(W), and instead enacts a new section of law on the topic that supersedes R.C. 3517.13(W). Under the act, any complaint that alleges a violation of R.C. 3517.13(W) must be treated as instead alleging a violation of the act's

provisions. The act prohibits all of the activities that are prohibited under R.C. 3517.13(W), as well as imposing some additional prohibitions and increased penalties and creating a new enforcement mechanism.¹

Making prohibited contributions and expenditures

The act prohibits a foreign national from knowingly doing any of the following, either directly or indirectly through another person or entity:

- Making a contribution or expenditure in support of or opposition to a candidate for any elective office in Ohio, including an office of a political party. (This provision is continuing law.)
- Making a contribution or expenditure in support of or opposition to a statewide ballot issue, regardless of whether the ballot issue has yet been certified to appear on the ballot. (It appears that the act would not prohibit a foreign national from making an independent expenditure regarding a local ballot issue – for example, by paying for ads for or against a levy issue without coordinating with a political entity in doing so.)
- Making a contribution to any of the following:
 - A candidate, campaign committee, political action committee (PAC), political contributing entity (PCE), legislative campaign fund, state candidate fund, political party, or separate segregated fund;
 - Any committee created to support or oppose a ballot issue. (It is not clear whether the committee in charge of a statewide initiative or referendum petition is considered a PAC or PCE under Ohio’s Campaign Finance Law. Such a committee would appear to fit the general definition of a PAC,² but the section of law specifically governing those committees does not refer to them as PACs.³ A 2021 Ohio Elections Commission (OEC) opinion concluded that a ballot issue committee is a PAC or PCE.⁴ The act does not explicitly answer this question, but instead lists ballot issue committees as a separate category in this context.)
 - To the maximum extent permitted by law and by the U.S. and Ohio Constitutions, a continuing association. (Under continuing law, a continuing association is a permanent organization, typically a nonprofit corporation, that has a primary

¹ R.C. 3517.121(E).

² Under R.C. 3517.01(C)(8), not in the act, a PAC is “a combination of two or more persons, the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy,” that is not another type of regulated political entity. However, certain exceptions apply.

³ R.C. 3517.12, not in the act.

⁴ Ohio Elections Commission, [Advisory Opinion 2021ELC-05 \(PDF\)](#) (December 16, 2021), available at elc.ohio.gov under “Advisory Opinions,” “Advisory Opinions by Year.”

purpose other than supporting or opposing specific candidates, political parties, or ballot issues and that is not regulated as another type of political entity. A common example of a continuing association is a 501(c)(4) social welfare organization.)

- Making a disbursement for the direct cost of producing or airing an electioneering communication. (Under continuing law, electioneering communications, sometimes known as issue ads, are run during campaign season and refer to an identified candidate, but they stop short of “express advocacy.” For example, an issue ad might state that a candidate is a good person without actually saying that viewers should vote for the candidate. Electioneering communications are not considered campaign expenditures, but some reporting requirements do apply to them.)
- Promising, either expressly or implicitly, to make a contribution, expenditure, or disbursement described above.

Under the act, whoever knowingly violates the prohibitions described above is guilty of a first degree misdemeanor on a first offense and a fifth degree felony on any subsequent offense. The violator also must be fined an amount equal to three times the amount involved in the violation or \$10,000, whichever amount is greater. Prior law imposed that fine, but did not include any misdemeanor or felony penalty.⁵

The continuing-law maximum penalty for a first degree misdemeanor is six months in jail and a \$1,000 fine. For a fifth degree felony, the maximum penalty is 12 months in prison and a \$2,500 fine.⁶

Accepting prohibited contributions

Further, the act prohibits certain persons from (1) knowingly soliciting, accepting, or receiving any funds from a foreign national for a political purpose as described above, or (2) from knowingly making a contribution or expenditure using any funds the person knows were received from a foreign national for such a purpose. This prohibition applies to any of the following persons, directly or indirectly through another person or entity:

- An individual;
- A candidate, campaign committee, PAC, PCE, legislative campaign fund, state candidate fund, political party, or separate segregated fund;
- Any committee created to support or oppose a ballot issue;
- To the maximum extent permitted by law and by the U.S. and Ohio Constitutions, a continuing association.

⁵ R.C. 3517.121(A)(1), (B), and (F)(1). See also R.C. 3517.01(C)(4), 3517.1011, 3517.13(W), and 3517.992, not in the act.

⁶ R.C. 2929.14, 2929.18, 2929.24, and 2929.28, not in the act.

In 2021, the OEC issued an opinion that the prior law against accepting foreign contributions prevented a foreign national from participating in any ballot issue campaign in Ohio.⁷ However, that law only prohibited a candidate, campaign committee, PAC, PCE, legislative campaign fund, state candidate fund, political party, or separate segregated fund from doing so. It did not apply to an individual, to a continuing association, or to a ballot issue committee that might not be considered a PAC or PCE. And, it did not prohibit a person from receiving foreign funds through a U.S. intermediary.

The act specifies that whoever violates the prohibitions described above is guilty of a first degree misdemeanor on a first offense and a fifth degree felony on any subsequent offense. The violator also must be fined an amount equal to three times the amount involved in the violation or \$10,000, whichever amount is greater, and must be ordered to return the amount to the foreign national. Prior law imposed the fine and allowed the Secretary of State to order the violator to return the amount, but it did not include any misdemeanor or felony penalty.⁸

Aiding or facilitating violations

The act adds a prohibition against any person knowingly aiding or facilitating a violation of any of the prohibitions described above. Whoever violates that prohibition is guilty of a first degree misdemeanor and must be fined \$1,000.⁹

Definition of “foreign national”

The act prohibits a lawful permanent U.S. resident, also known as a green card holder, from making contributions or expenditures regarding ballot issues or candidates. Under prior law, which mirrored federal law, an individual was considered a foreign national if the individual was not (1) a U.S. citizen or national or (2) a lawful permanent U.S. resident. Under the act, only a U.S. citizen or national may make a contribution or expenditure. (All U.S. citizens are considered U.S. nationals, but there is a small category of individuals from American Samoa, Swains Island, and the Northern Mariana Islands who are noncitizen U.S. nationals.)¹⁰

With respect to foreign entities, the act retains the prior law definition, which is the same as under federal law. A person, other than an individual, is a foreign national if the person is any of the following:¹¹

- A government of a foreign country or of a political subdivision of a foreign country;
- A foreign political party;

⁷ [Advisory Opinion 2021ELC-05 \(PDF\)](#).

⁸ R.C. 3517.121(C) and (F)(2). See also R.C. 3517.13(W)(2) and 3517.992, not in the act.

⁹ R.C. 3517.121(D) and (F)(3).

¹⁰ 8 United States Code (U.S.C.) 1408. See also U.S. Department of State, [Certificates of Non Citizen Nationality](#), available at travel.state.gov under “Legal Resources,” “U.S. Citizenship Laws and Policy.”

¹¹ R.C. 3517.121(A). See also R.C. 3517.13(W), not in the act, and 52 U.S.C. 30121.

- A person that is organized under the laws of a foreign country or has its principal place of business in a foreign country.

Enforcement

The act makes an exception to the general requirement that, before any prosecution or court proceeding may begin for a violation of the Campaign Finance Law, a complaint must be filed with the OEC. For other violations of the Campaign Finance Law, if the OEC determines that a violation has occurred, the OEC has discretion to refer the matter to a prosecutor for potential court proceedings or instead to impose an administrative fine in any amount, up to the maximum court fine.

With respect to violations of the law regarding foreign nationals, the act instead gives the Attorney General exclusive authority to investigate and prosecute, unless the Attorney General is a victim or witness or is otherwise involved in the case. In that situation, the Attorney General must refer the matter to the prosecutor who would handle the case pursuant to an OEC referral (depending on the situation, the Franklin County Prosecutor or the county prosecutor of the most populous county in which the candidate or issue is to appear on the ballot). Where the statute governing the OEC would give the OEC discretion to choose the prosecutor, the act instead gives that discretion to the Attorney General.

The act requires the Attorney General, in consultation with the Secretary of State, to investigate an alleged violation of the act upon the occurrence of either of the following:

- The submission of a written request to the Attorney General by the Governor, the Secretary of State, the General Assembly, or the OEC, alleging a violation;
- The filing of a complaint with the Attorney General by an elector of Ohio, alleging a violation.

If it appears to the Attorney General that there is probable cause to believe that a violation of the act has occurred, the Attorney General may prosecute the violation in a court of competent jurisdiction. When proceeding under the act, the Attorney General and any assistant or special counsel have all the rights, privileges, and powers conferred by law on county prosecutors, including the power to appear before, and interrogate witnesses before, grand juries.¹²

¹² R.C. 3517.121(G) and (H). See also R.C. 3517.13(W), 3517.153, 3517.155(D), 3517.992, and 3517.993, not in the act.

HISTORY

Action	Date
Introduced	05-28-24
Reported, H. Government Oversight	05-30-24
Passed House (64-31)	05-30-24
Passed Senate (24-7)	05-31-24
