

2017 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1234

2017 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union, State Capitol

HB 1234
1/19/2017
27128

- Subcommittee
 Conference Committee

Committee Clerk Signature

Carmer Hart

Explanation or reason for introduction of bill/resolution:

Relating to prohibiting campaign contributions from and expenditures by foreign nationals

Minutes:

Attachment 1, 2

Chairman Kasper opened the hearing on HB 1234.

Rep. Corey Mock appeared in support of HB 1234. This bill would prohibit foreign campaign contributions. It would take what already exists in federal statute and place it into ND Century Code. In 1966 the Foreign Agents Registration Act was passed by Congress which prohibited any foreign campaign contributions from being given to candidates. The sponsors of this bill want to make sure that we were providing clarity to the ND statute, and it is that foreign campaign contributions are prohibited nationally as well as in North Dakota. If there was any change to the federal law, they would have to change state law as well. The language was taken in part from the FECA (Federal Election Campaign Act) which explicitly prohibits the contributions to state candidates.

Chairman Kasper asked Rep. Mock to provide copies of the federal statute he had read from. Attachment 1

Rep. Steiner: There are some Canadians in Bismarck who have dual citizenship. Are we allowed to take it if they live in Bismarck and a friend of ours but happen to be born in Canada?

Rep. Mock: He read from Page 2 of Attachment 1 regarding Who is a Foreign National. If they can legally vote in an American election, my interpretation is they would legally be able to contribute to a candidate in the United States.

Rep. Olson: It is already illegal federally and we are adding it to Century Code for clarification and in factually make state law since none exists. Is there a penalty associated with this from the state level?

Rep. Mock: The law would be located in Section 16.1-08.1. I would have to check Century Code to see specifically what the penalty for violating that section of law is. Federally, it is overseen and enforced by the Federal Election Commission.

Al Jaeger, Secretary of State, appeared in support. Since it has been in federal law, we have tried to make candidates aware of the federal law that did cover even though it wasn't in state law. It probably is some value to have it in state law.

Rep. Olson: 16.1-08 has a general penalty provision for the entire chapter is guilty of a Class A misdemeanor. Attachment 2

Rep. P. Anderson: Regarding where it says indirectly, I have a condo in Florida and there are a lot of Canadians that live there, and they wanted to give me campaign contributions. I said you can't because you are from Canada. When asked if they could buy dinner, I said no. (Indirectly?)

Dustin Gawrylow, ND Watchdog Network, appeared in support. The general notion that the American taxpayer should be fighting foreign money is just immoral. We have a rule that we only take in state money unless one of our longtime contributors lines up the money out of state. We will accept that check, but we do not solicit out of state, and we would never consider taking the foreign contribution even though legally we can under federal law.

Rep. Mock: My understanding is that indirectly is that if a foreign national were to give money to an American citizen to give to a candidate, they would potentially be in violation of this because it was indirectly given. It is the direct contribution but also the indirect contribution of funneling the money through another entity in order to contribute to that candidate.

Chairman Kasper: It is more in the area of laundering money and not having to do with going and having a steak?

Rep. Mock: Correct.

Chairman Kasper closed the hearing.

Rep. Laning made a motion for a DO PASS on HB 1234.

Rep. Olson seconded the motion.

A roll call vote was taken. 12 Yeas, 0 Nays, 2 Absent.

Rep. Schneider will carry the bill.

Date: 1-19-17
 Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1234**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Lanning Seconded By Olson

Representatives	Yes	No	Representatives	Yes	No
Jim Kasper-Chairman	X		Pamela Anderson	X	
Scott Louser-Vice Chairman	X		Mary Schneider	X	
Jason Dockter	X				
Craig A. Johnson	X				
Daniel Johnston	X				
Karen Karls	X				
Ben Koppelman	X				
Vernon Lanning	X				
Christopher D. Olson	X				
Karen M. Rohr	X				
Vicky Steiner	X				
Steve Vetter	X				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Schneider

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1234: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
HB 1234 was placed on the Eleventh order on the calendar.

2017 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1234

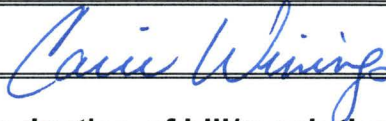
2017 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Sheyenne River Room, State Capitol

HB 1234
3/9/2017
Job Number 28958

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact section 16.1-8.1-03.15 of the North Dakota Century Code, relating to prohibiting campaign contributions from and expenditures by foreign nationals.

Minutes:

Attachments: 1

Chairman Poolman: Opened the hearing on HB 1234.

Representative Mock, District 18: See Attachment #1 for information on testimony as sponsor and in favor of the bill. This bill would put in state statute the similar core additions regarding foreign campaign contributions that exists in federal code. I handed information out to you from the FEC website. This information explains what a foreign national is, as well as the Federal Election Campaign Act and how it prohibits foreign campaign contributions. The FECA was passed in 1974, and foreign campaign contributions have been prohibited for all levels of elected office in the United States. This rarely has been an issue in most areas but in North Dakota, because it is not in state statute, there has been some ambiguity among some individuals in the past that have unknowingly accepted what ended up being illegal campaign contributions. It was brought to our attention and the contributions were returned, but we need to address this. North Dakota state statute should have foreign contributions prohibited to conform with federal statute.

(3:01) Senator Bekkedahl: It was my understanding that on a prior occurrence that involved this area, there was inquiries made to the Secretary of State's office about the issue, and there was even some disparity or questions from the Secretary of State's office back to the candidates. Will this clear that up?

Representative Mock: Yes, I do believe that it absolves and eliminate any of that ambiguity.

(4:25) Chairman Poolman: There was no further testimony present. Closed the hearing on HB 1234.

Senator Vedaa: Moved a Do Pass.

Senator Meyer: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Marcellais will carry the bill.

2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1234

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Vedaa Seconded By Meyer

Senators	Yes	No	Senators	Yes	No
Chairman Poolman	✓		Senator Marcellais	✓	
Vice Chairman Davison	✓				
Senator Bekkedahl	✓				
Senator Meyer	✓				
Senator Vedaa	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Marcellais

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1234: Government and Veterans Affairs Committee (Sen. Poolman, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1234 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

HB 1234

Attachment 1
1234
1-19-17

Foreign Nationals

Published in July 2003

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Introduction



The ban on political contributions and expenditures by foreign nationals was first enacted in 1966 as part of the amendments to the [Foreign Agents Registration Act \(FARA\)](#), an "internal security" statute. The goal of the FARA was to minimize foreign intervention in U.S. elections by establishing a series of limitations on foreign nationals. These included registration requirements for the agents of foreign principals and a general prohibition on political contributions by foreign nationals. In 1974, the prohibition was incorporated into the Federal Election Campaign Act (the FECA), [\[HTML\]](#) [\[PDF\]](#) giving the Federal Election Commission (FEC) jurisdiction over its enforcement and interpretation.

This brochure has been developed to help clarify the rules regarding the political activity of foreign nationals; however, it is not intended to provide an exhaustive discussion of the election law. If you have any questions after reading this, please contact the FEC in Washington, D.C., at 1-800-424-9530 or 202-694-1100. Members of the press should contact the [FEC Press Office](#) at [202-694-1220](#) or at the toll free number listed above.

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The Prohibition

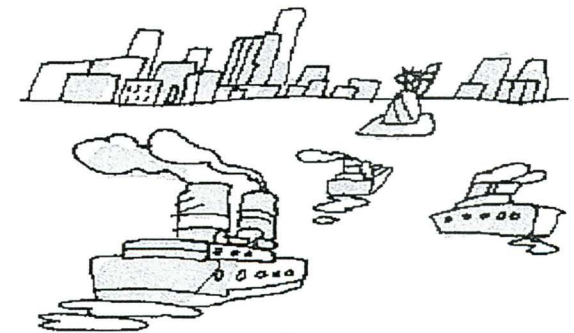
The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating, or spending money in connection with any federal, state, or local election in the United States, either directly or indirectly. It is also unlawful to help foreign

nationals violate that ban or to solicit, receive or accept contributions or donations from them. Persons who knowingly and willfully engage in these activities may be subject to fines and/or imprisonment.

Who is a Foreign National?

The following groups and individuals are considered "foreign nationals" and are, therefore, subject to the prohibition:

- Foreign governments;
- Foreign political parties;
- Foreign corporations;
- Foreign associations;
- Foreign partnerships;
- Individuals with foreign citizenship; and
- Immigrants who do not have a "green card."



Individuals: The "Green Card" Exception

An immigrant may make a contribution if he or she has a "green card" indicating his or her lawful admittance for permanent residence in the United States.

Domestic Subsidiaries and Foreign-Owned Corporations

A U.S. subsidiary of a foreign corporation or a U.S. corporation that is owned by foreign nationals may be subject to the prohibition, as discussed below.

PAC Contributions for Federal Activity

A domestic subsidiary of a foreign corporation may not establish a federal political action committee (PAC) to make federal contributions if:

1. The foreign parent corporation finances the PAC's establishment, administration, or solicitation costs; or
2. Individual foreign nationals:
 - Participate in the operation of the PAC;
 - Serve as officers of the PAC;
 - Participated in the selection of persons who operate the PAC; or
 - Make decisions regarding PAC contributions or expenditure. 11 CFR 110.20(i).
(See also AOs 2000-17, 1995-15, 1990-8, 1989-29, and 1989-20.)

Additionally, a domestic subsidiary of a foreign corporation (or a domestic corporation owned by foreign nationals) may not donate funds or anything of value in connection with state or local elections if:

1. These activities are financed by the foreign parent or owner; or
2. Individual foreign nationals are involved in any way in the making of donations to nonfederal candidates and committees.[1]

Please note that many states place additional restrictions on donations made to nonfederal candidates and committees. 11 CFR 110.20(i). (See also AOs 1992-16, 1985-3, 1982-10, and Matter Under Review (MUR) 2892.)

Volunteer Activity

Generally, an individual may volunteer personal services to a federal candidate or federal political committee without making a contribution. The Act provides this volunteer "exemption" as long as the individual performing the service is not compensated by anyone. 11 CFR 100.74. The Commission has addressed applicability of this exemption to volunteer activity by a foreign national, as explained below.

In AO 1987-25, the Commission allowed a foreign national student to provide uncompensated volunteer services to a Presidential campaign. By contrast, the decision in AO 1981-51 prohibited a foreign national artist from donating his services in connection with fundraising for a Senate campaign.[2]

Non-election Activity by Foreign Nationals

Despite the general prohibition on foreign national contributions and donations, foreign nationals may lawfully engage in political activity that is not connected with any election to political office at the federal, state, or local levels. The FEC has clarified such activity with respect to individuals' activities.

In AO 1989-32, the Commission concluded that although foreign nationals could make disbursements solely to influence ballot issues, a foreign national could not contribute to a ballot committee that had coordinated its efforts with a nonfederal candidate's re-election campaign.

In AO 1984-41, the Commission allowed a foreign national to underwrite the broadcast of apolitical ads that attempted to expose the alleged political bias of the media. The Commission found that these ads were not election influencing because they did not mention candidates, political offices, political parties, incumbent federal officeholders or any past or future election.[3]



Assisting Foreign National Contributions or Donations

Under Commission regulations it is unlawful to knowingly provide substantial assistance to foreign nationals making contributions or donations in connection with any U.S. election. 11 CFR 110.20(h). "Substantial assistance" refers to active involvement in the solicitation, making, receipt or acceptance of a foreign national contribution or donation with the intent of facilitating the successful completion of the transaction. This prohibition includes, but is not limited to individuals who act as conduits or intermediaries. 67 FR 69945-6 (November 19, 2002) [PDF].

Soliciting, Accepting, or Receiving Contributions and Donations from Foreign Nationals

As noted earlier, the Act prohibits knowingly soliciting, accepting or receiving contributions or donations from foreign nationals. In this context, "knowingly" means a person:

- Has actual knowledge that the funds solicited, accepted, or received are from a foreign national;
- Is aware of facts that would lead a reasonable person to believe that the funds solicited, accepted, or received are likely to be from a foreign national;
- Is aware of facts that would lead a reasonable person to inquire whether the source of the funds solicited, accepted or received is a foreign national. 11 CFR 110.20(a)(4)(i), (ii) and (iii).

Pertinent facts that may lead to inquiry by the recipient include, but are not limited to the following: A donor or contributor uses a foreign passport, provides a foreign address,

makes a contribution from a foreign bank, or resides abroad. Obtaining a copy of a current and valid U.S. passport would satisfy the duty to inquire whether the funds solicited, accepted, or received are from a foreign national. 11 CFR 110.20(a)(7).

Monitoring Prohibited Contributions

When a federal political committee (a committee active in federal elections) receives a contribution it believes may be from a foreign national, it must:

- Return the contribution to the donor without depositing it; or
- Deposit the contribution and take steps to determine its legality, as described below.

Either action must be taken within 10 days of the treasurer's receipt. 11 CFR 103.3(b)(1).

If the committee decides to deposit the contribution, the treasurer must make sure that the funds are not spent because they may have to be refunded. Additionally, he or she must maintain a written record explaining why the contribution may be prohibited.^[4] 11 CFR 103.3(b)(4) and (5). The legality of the contribution must be confirmed within 30 days of the treasurer's receipt, or the committee must issue a refund.^[5]

If the committee deposits a contribution that appears to be legal, but later discovers that the deposited contribution is from a foreign national, it must refund the contribution within 30 days of making the discovery. If a committee lacks sufficient funds to make a refund when a prohibited contribution is discovered, it must use the next funds it receives. 11 CFR 103.3(b)(1) and (2).

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FOOTNOTES:

^[1] This means that foreign nationals may not participate in donation activity, allocate funds for donations, or make decisions regarding donations (e.g., selecting the recipients, approving the making of donations, or approving the issuance of donation checks).

^[2] The Commission has stated that this opinion is not superceded by AO 1987-25. Individuals may obtain further guidance in this area by requesting an advisory opinion about their proposed activity.

^[3] Individuals and committees should consider requesting an advisory opinion before engaging in other types of political activity involving foreign nationals.

^[4] This information must be included when the receipt of the contribution is reported.

^[5] For example, evidence of legality includes a written statement from the contributor explaining why the contribution is legal (e.g. donor has a green card), or an oral explanation that is recorded in memorandum.

This publication provides guidance on certain aspects of federal campaign finance law. This publication is not intended to replace the law or to change its meaning, nor does this publication create or confer any rights

for or on any person or bind the Federal Election Commission (Commission) or the public. The reader is encouraged also to consult the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 et seq.), Commission regulations (Title 11 of the Code of Federal Regulations), Commission advisory opinions, and applicable court decisions. For further information, please contact:

*Federal Election Commission
999 E Street, NW
Washington, DC 20463
(800) 424-9530; (202) 694-1100
info@fec.gov
www.fec.gov*

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3. In reporting a contribution received through a conduit, a candidate, political party, or political committee shall list each reportable contribution identifying the person that submitted the contribution to the conduit and provide the required information regarding the contribution from that person rather than identifying the conduit as the contributor.
4. Any statement and data filed with the secretary of state must be made available on the internet to the public free of charge within twenty-four hours after filing.

16.1-08.1-06.1. Filing officer to charge and collect fees for late filing.

1. If a statement or report required to be filed according to this chapter is not filed within the prescribed time, the filing officer to whom the report was to be filed is authorized to charge and collect a late fee as follows:
 - a. Within six days after the prescribed time, twenty-five dollars;
 - b. Within eleven days after the prescribed time, fifty dollars; and
 - c. Thereafter, one hundred dollars.
2. A filing officer may require an amendment to be filed for any statement or report that is incorrect or incomplete. The amendment must be filed with the filing officer within ten business days after the amendment has been requested in writing. If an amendment is not filed within the prescribed time, the filing officer is authorized to charge and collect a late fee as follows:
 - a. Within six days after the date the amendment was due, fifty dollars;
 - b. Within eleven days after the date the amendment was due, one hundred dollars; and
 - c. Thereafter, two hundred dollars.
3. The filing officer may collect any payment obligation arising out of this section by civil action or by assignment to a collection agency, with any costs of collection to be added to the amount owed and to be paid by the delinquent filer.

16.1-08.1-06.2. Secretary of state to provide instructions and conduct training.

The secretary of state shall provide instructions and conduct training for the purpose of promoting uniform application of campaign finance and disclosure requirements and the uniform filing of statements, registrations, or reports according to this chapter.

16.1-08.1-07. Penalty.

Except as otherwise provided, any person who willfully violates any provision of this chapter is guilty of a class A misdemeanor.

Foreign Nationals

Published in July 2003

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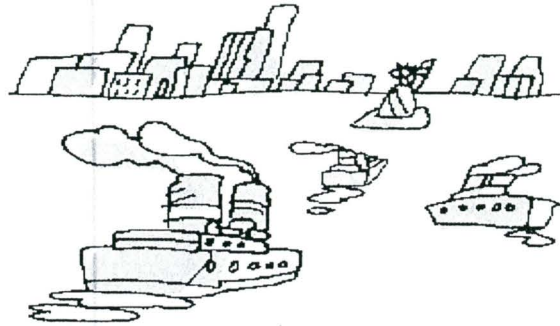
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