

New Washington State Law Requires 'No Foreign National' Certification for Corporate and PAC Contributions

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A new Washington state law went into effect on June 11 that is aimed at preventing foreign money from entering campaigns in the state. The state law generally parallels the preexisting federal law banning foreign national participation in federal, state, and local elections. However, the new state law imposes an additional certification requirement that will apply whenever corporations, PACs, and other organizations make contributions in connection with Washington state elections.

Specifically, the new Washington law applies whenever a non-individual entity makes a contribution to a Washington state or local candidate, party committee, or PAC. On the contributor side, entities subject to the new requirement include not only business corporations and PACs, but also Section 527 political organizations, 501(c)(4) groups, and 501(c)(6) trade associations.

When a Washington state recipient receives a contribution from such an entity, the recipient is now required to obtain a certification from an individual "authorized to make the contribution" on behalf of the contributing entity that: (1) the entity itself is not a foreign national; (2) the contribution is not "financed in any part" by a foreign national; and (3) no foreign national was involved in making any decisions regarding the contribution.

Similar to the federal law, the Washington law defines a foreign national entity as one that is organized under the laws of a foreign country or that has its principal place of business abroad. With respect to the "financing" element, the new state law is aimed at

Authors

Caleb P. Burns
Partner
202.719.7451
cburns@wiley.law

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foreign nationals providing “anything of value ... for less than full consideration.” Therefore, simply having revenues from commercial sales to foreign customers or clients will not trigger the ban. The Washington Public Disclosure Commission (PDC) also has confirmed in public guidance that merely having foreign shareholders does not trigger the law.

With respect to the decision-making element, the PDC has issued emergency regulations that also are similar to the federal law. Under the state regulations, a foreign national is involved in decision-making if he or she “directs, dictates, controls, or directly or indirectly participates in the decision-making process” regarding the contribution.

The PDC’s guidance and regulations also track the federal law in addressing domestic subsidiaries of foreign corporations. Domestic subsidiaries are still permitted to make contributions in Washington under the new law, provided that their contributions are not “financed” by their foreign parent and no foreign nationals are involved in the domestic subsidiary’s decision-making regarding the contributions.