

HOUSE BILL No. 6493

September 14, 2006, Introduced by Rep. Nitz and referred to the Committee on House Oversight, Elections, and Ethics.

A bill to amend 1976 PA 388, entitled
"Michigan campaign finance act,"
by amending section 15 (MCL 169.215), as amended by 2001 PA 250.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 15. (1) The secretary of state shall do all of the
2 following:

3 (a) Make available through his or her offices, and furnish to
4 county clerks, appropriate forms, instructions, and manuals
5 required by this act.

6 (b) Develop a filing, coding, and cross-indexing system for
7 the filing of required reports and statements consistent with ~~the~~
8 ~~purposes of~~ this act, and supervise the implementation of the
9 filing systems by the clerks of the counties.

1 (c) Receive all statements and reports required by this act to
2 be filed with the secretary of state.

3 (d) Prepare forms, instructions, and manuals required under
4 this act.

5 (e) Promulgate rules and issue declaratory rulings to
6 implement this act in accordance with the administrative procedures
7 act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

8 (f) Upon receipt of a written request and the required filing,
9 waive payment of a late filing fee if the request for the waiver is
10 based on good cause and accompanied by adequate documentation. One
11 or more of the following reasons constitute good cause for a late
12 filing fee waiver:

13 (i) The incapacitating physical illness, hospitalization,
14 accident involvement, death, or incapacitation for medical reasons
15 of a person required to file, **OR** a person whose participation is
16 essential to the preparation of, the statement or report, or a
17 member of the immediate family of these persons.

18 (ii) Other unique, unintentional factors beyond the filer's
19 control, not stemming from a negligent act or nonaction, ~~so~~ **THAT**
20 **ARE OF SUCH A NATURE** that a reasonably prudent person would excuse
21 the filing on a temporary basis. These factors include the loss or
22 unavailability of records due to a fire, flood, theft, or similar
23 reason and difficulties related to the transmission of the filing
24 to the filing official, such as exceptionally bad weather or
25 strikes involving transportation systems.

26 (2) A declaratory ruling shall be issued under this section
27 only if the person requesting the ruling has provided a reasonably

1 complete statement of facts necessary for the ruling or if the
2 person requesting the ruling has, with the permission of the
3 secretary of state, supplied supplemental facts necessary for the
4 ruling. A request for a declaratory ruling that is submitted to the
5 secretary of state shall be made available for public inspection
6 within 48 hours after its receipt. An interested person may submit
7 written comments regarding the request to the secretary of state
8 within 10 business days after the date the request is made
9 available to the public. Within 45 business days after receiving a
10 declaratory ruling request, the secretary of state shall make a
11 proposed response available to the public. An interested person may
12 submit written comments regarding the proposed response to the
13 secretary of state within 5 business days after the date the
14 proposal is made available to the public. Except as otherwise
15 provided in this section, the secretary of state shall issue a
16 declaratory ruling within 60 business days after a request for a
17 declaratory ruling is received. If the secretary of state refuses
18 to issue a declaratory ruling, the secretary of state shall notify
19 the person making the request of the reasons for the refusal and
20 shall issue an interpretative statement providing an informational
21 response to the question presented within the same time limitation
22 applicable to a declaratory ruling. A declaratory ruling or
23 interpretative statement issued under this section shall not state
24 a general rule of law, other than that which is stated in this act,
25 until the general rule of law is promulgated by the secretary of
26 state as a rule under the administrative procedures act of 1969,
27 1969 PA 306, MCL 24.201 to 24.328, or under judicial order.

1 (3) Under extenuating circumstances, the secretary of state
2 may issue a notice extending for not more than 30 business days the
3 period during which the secretary of state shall respond to a
4 request for a declaratory ruling. The secretary of state shall not
5 issue more than 1 notice of extension for a particular request. A
6 person requesting a declaratory ruling may waive, in writing, the
7 time limitations provided by this section.

8 (4) The secretary of state shall make available to the public
9 an annual summary of the declaratory rulings and interpretative
10 statements issued by the secretary of state.

11 (5) A person may file with the secretary of state a complaint
12 that alleges a violation of this act. Within 5 business days after
13 a complaint that meets the requirements of subsection (6) is filed,
14 the secretary of state shall give notice to the person against whom
15 the complaint is filed. The notice shall include a copy of the
16 complaint. Within 15 business days after this notice is provided,
17 the person against whom the complaint was filed may submit to the
18 secretary of state a response. The secretary of state may extend
19 the period for submitting a response an additional 15 business days
20 for good cause. The secretary of state shall provide a copy of a
21 response received to the complainant. Within 10 business days after
22 receiving a copy of the response, the complainant may submit to the
23 secretary of state a rebuttal statement. The secretary of state may
24 extend the period for submitting a rebuttal statement an additional
25 10 business days for good cause. The secretary of state shall
26 provide a copy of the rebuttal statement to the person against whom
27 the complaint was filed.

1 (6) A complaint under subsection (5) shall satisfy all of the
2 following requirements:

3 (a) Be signed by the complainant.

4 (b) State the name, address, and telephone number of the
5 complainant.

6 (c) Include the complainant's certification that, to the best
7 of the complainant's knowledge, information, and belief, formed
8 after a reasonable inquiry under the circumstances, each factual
9 contention of the complaint is supported by evidence. However, if,
10 after a reasonable inquiry under the circumstances, the complainant
11 is unable to certify that certain factual contentions are supported
12 by evidence, the complainant may certify that, to the best of his
13 or her knowledge, information, or belief, there are grounds to
14 conclude that those specifically identified factual contentions are
15 likely to be supported by evidence after a reasonable opportunity
16 for further inquiry.

17 (7) The secretary of state shall develop a form that satisfies
18 the requirements of subsection (6) and may be used for the filing
19 of complaints.

20 (8) A person who files a complaint with a false certificate
21 under subsection (6)(c) is responsible for a civil violation of
22 this act. A person may file a complaint under subsection (5)
23 alleging that another person has filed a complaint with a false
24 certificate under subsection (6)(c).

25 (9) The secretary of state shall investigate the allegations
26 **IN A COMPLAINT UNDER SUBSECTION (5)** under the rules promulgated
27 under this act. Every 60 days after a complaint that meets the

1 requirements of subsection (6) is filed and until the matter is
2 terminated, the secretary of state shall mail to the complainant
3 and to the alleged violator notice of the action taken to date by
4 the secretary of state ~~—, together with—~~ **AND** the reasons for the
5 action or nonaction.

6 (10) If the secretary of state determines that there may be
7 reason to believe that a violation of this act has occurred, the
8 secretary of state shall endeavor to correct the violation or
9 prevent a further violation by using informal methods such as a
10 conference, conciliation, or persuasion, and may enter into a
11 conciliation agreement with the person involved. Unless violated, a
12 conciliation agreement is a complete bar to any further action with
13 respect to matters covered in the conciliation agreement. If the
14 secretary of state is unable to correct or prevent further
15 violation by these informal methods, the secretary of state may
16 refer the matter to the attorney general for the enforcement of a
17 criminal penalty provided by this act or commence a hearing as
18 provided in subsection (11).

19 (11) The secretary of state may commence a hearing to
20 determine whether a civil violation of this act has occurred. A
21 hearing shall not be commenced during the period beginning 30 days
22 before an election in which the committee has received or expended
23 money and ending the day after that election except with the
24 consent of the person suspected of committing a civil violation.
25 The hearing shall be conducted in accordance with the procedures
26 set forth in chapter 4 of the administrative procedures act of
27 1969, 1969 PA 306, MCL 24.271 to 24.287. If after a hearing the

1 secretary of state determines that a violation of this act has
2 occurred, the secretary of state may issue an order requiring the
3 person to pay a civil fine equal to the amount of the improper
4 contribution or expenditure plus not more than \$1,000.00 for each
5 violation.

6 (12) THE SECRETARY OF STATE MAY APPLY TO THE CIRCUIT COURT IN
7 THE APPROPRIATE COUNTY FOR ISSUANCE OF, AND THE COURT MAY ISSUE, A
8 SUBPOENA TO COMPEL THE PRODUCTION OF DOCUMENTS OR OTHER THINGS OR
9 TO COMPEL TESTIMONY IN CONNECTION WITH AN INVESTIGATION UNDER THIS
10 ACT. FAILURE TO COMPLY WITH A SUBPOENA ISSUED UNDER THIS SUBSECTION
11 CONSTITUTES CONTEMPT OF COURT, PUNISHABLE UNDER CHAPTER 17 OF THE
12 REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.1701 TO
13 600.1745.

14 (13) ~~—(12)—~~ A final decision and order issued by the secretary
15 of state is subject to judicial review as provided by chapter 6 of
16 the administrative procedures act of 1969, 1969 PA 306, MCL 24.301
17 to 24.306. The secretary of state shall deposit a civil fine
18 imposed under this section in the general fund. The secretary of
19 state may bring an action in **THE** circuit court to recover the
20 amount of a civil fine.

21 (14) ~~—(13)—~~ When a report or statement is filed under this
22 act, the secretary of state shall review the report or statement
23 and may investigate an apparent violation of this act under the
24 rules promulgated under this act. If the secretary of state
25 determines that there may be reason to believe a violation of this
26 act has occurred and the procedures prescribed in subsection (10)
27 have been complied with, the secretary of state may refer the

1 matter to the attorney general for the enforcement of a criminal
2 penalty provided by this act, or commence a hearing under
3 subsection (11) to determine whether a civil violation of this act
4 has occurred.

5 (15) ~~—(14)—~~ Unless otherwise specified in this act, a person
6 who violates a provision of this act is subject to a civil fine of
7 not more than \$1,000.00 for each violation. A civil fine is in
8 addition to, but not limited by, a criminal penalty prescribed by
9 this act.

10 (16) ~~—(15)—~~ In addition to any other sanction provided for by
11 this act, the secretary of state may require a person who files a
12 complaint with a false certificate under subsection (6)(c) to do
13 either or both of the following:

14 (a) Pay to the secretary of state some or all of the expenses
15 incurred by the secretary of state as a direct result of the filing
16 of the complaint.

17 (b) Pay to the person against whom the complaint was filed
18 some or all of the expenses, including, but not limited to,
19 reasonable attorney fees, incurred by that person in proceedings
20 under this act as a direct result of the filing of the complaint.

21 (17) ~~—(16)—~~ There is no private right of action, either in law
22 or in equity, under this act. The remedies provided in this act are
23 the exclusive means by which this act may be enforced and by which
24 any harm resulting from a violation of this act may be redressed.

25 (18) ~~—(17)—~~ The secretary of state may waive the filing of a
26 campaign statement required under section 33, 34, or 35 if the
27 closing date of the particular campaign statement falls on the same

1 or a later date as the closing date of the next campaign statement
2 filed by the same person, or if the period that would be otherwise
3 covered by the next campaign statement filed by the same person is
4 10 days or less.

5 (19) ~~—(18)—~~ The clerk of each county shall do all of the
6 following:

7 (a) Make available through the county clerk's office the
8 appropriate forms, instructions, and manuals required by this act.

9 (b) Under the supervision of the secretary of state, implement
10 the filing, coding, and cross-indexing system prescribed for the
11 filing of reports and statements required to be filed with the
12 county clerk's office.

13 (c) Receive all statements and reports required by this act to
14 be filed with the county clerk's office.

15 (d) Upon written request, waive the payment of a late filing
16 fee if the request for a waiver is based on good cause as
17 prescribed in subsection (1)(f).