

SENATE BILL No. 1299

May 7, 2008, Introduced by Senators McMANUS, JANSEN, BROWN and CROPSEY and referred to the Committee on Campaign and Election Oversight.

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.

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

1 (d) Prepare forms, instructions, and manuals required under
2 this act.

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

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

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

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

24 (2) A declaratory ruling shall be issued under this section
25 only if the person requesting the ruling has provided a reasonably
26 complete statement of facts necessary for the ruling or if the
27 person requesting the ruling has, with the permission of the

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

26 (3) Under extenuating circumstances, the secretary of state
27 may issue a notice extending for not more than 30 business days the

1 period during which the secretary of state shall respond to a
2 request for a declaratory ruling. The secretary of state shall not
3 issue more than 1 notice of extension for a particular request. A
4 person requesting a declaratory ruling may waive, in writing, the
5 time limitations provided by this section.

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

9 (5) A person may file with the secretary of state a complaint
10 that alleges a violation of this act. Within 5 business days after
11 a complaint that meets the requirements of subsection (6) is filed,
12 the secretary of state shall give notice to the person against whom
13 the complaint is filed. The notice shall include a copy of the
14 complaint. Within 15 business days after this notice is provided,
15 the person against whom the complaint was filed may submit to the
16 secretary of state a response. The secretary of state may extend
17 the period for submitting a response an additional 15 business days
18 for good cause. The secretary of state shall provide a copy of a
19 response received to the complainant. Within 10 business days after
20 receiving a copy of the response, the complainant may submit to the
21 secretary of state a rebuttal statement. The secretary of state may
22 extend the period for submitting a rebuttal statement an additional
23 10 business days for good cause. The secretary of state shall
24 provide a copy of the rebuttal statement to the person against whom
25 the complaint was filed. **THE SECRETARY OF STATE SHALL POST ON THE**
26 **SECRETARY OF STATE'S INTERNET WEBSITE ANY COMPLAINT, RESPONSE, OR**
27 **REBUTTAL STATEMENT RECEIVED UNDER THIS SUBSECTION.**

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 under the rules promulgated under this act. ~~Every 60 days after a~~
27 ~~complaint that meets the requirements of subsection (6) is filed~~

1 ~~and until the matter is terminated, the secretary of state shall~~
2 ~~mail to the complainant and to the alleged violator notice of the~~
3 ~~action taken to date by the secretary of state, together with the~~
4 ~~reasons for the action or nonaction.~~

5 (10) ~~If~~ **NO LATER THAN 60 BUSINESS DAYS AFTER RECEIPT OF A**
6 **REBUTTAL STATEMENT SUBMITTED UNDER SUBSECTION (5),** the secretary of
7 state ~~determines that~~ **SHALL POST ON THE SECRETARY OF STATE'S**
8 **INTERNET WEBSITE WHETHER OR NOT** there may be reason to believe that
9 a violation of this act has occurred. **IF THE SECRETARY OF STATE**
10 **DETERMINES THAT THERE MAY BE REASON TO BELIEVE THAT A VIOLATION OF**
11 **THIS ACT OCCURRED,** the secretary of state shall endeavor to correct
12 the violation or prevent a further violation by using informal
13 methods such as a conference, conciliation, or persuasion, and may
14 enter into a conciliation agreement with the person involved.
15 Unless violated, a conciliation agreement is a complete bar to any
16 further action with respect to matters covered in the conciliation
17 agreement. If, **AFTER 30 BUSINESS DAYS,** the secretary of state is
18 unable to correct or prevent further violation by these informal
19 methods, the secretary of state ~~may~~ **SHALL** refer the matter to the
20 attorney general **AND THE APPROPRIATE COUNTY PROSECUTING ATTORNEY**
21 for the enforcement of a ~~ANY~~ criminal penalty provided by this act
22 or commence a hearing as provided in subsection (11) **FOR**
23 **ENFORCEMENT OF ANY CIVIL VIOLATION.**

24 (11) The secretary of state ~~may~~ **SHALL** commence a hearing to
25 determine whether a civil violation of this act has occurred. A
26 ~~hearing shall not be commenced during the period beginning 30 days~~
27 ~~before an election in which the committee has received or expended~~

1 ~~money and ending the day after that election except with the~~
2 ~~consent of the person suspected of committing a civil violation.~~
3 The hearing shall be conducted in accordance with the procedures
4 set forth in chapter 4 of the administrative procedures act of
5 1969, 1969 PA 306, MCL 24.271 to 24.287. If after a hearing the
6 secretary of state determines that a violation of this act has
7 occurred, the secretary of state ~~may~~ **SHALL** issue an order requiring
8 the person to pay a civil fine equal to **TRIPLE** the amount of the
9 improper contribution or expenditure plus not more than \$1,000.00
10 for each violation.

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

18 (13) When a report or statement is filed under this act, the
19 secretary of state shall review the report or statement and may
20 investigate an apparent violation of this act under the rules
21 promulgated under this act. If the secretary of state determines
22 that there may be reason to believe a violation of this act has
23 occurred and the procedures prescribed in subsection (10) have been
24 complied with, the secretary of state may refer the matter to the
25 attorney general for the enforcement of a criminal penalty provided
26 by this act, or commence a hearing under subsection (11) to
27 determine whether a civil violation of this act has occurred.

1 (14) Unless otherwise specified in this act, a person who
2 violates a provision of this act is subject to a civil fine of not
3 more than \$1,000.00 for each violation. A civil fine is in addition
4 to, but not limited by, a criminal penalty prescribed by this act.

5 (15) In addition to any other sanction provided for by this
6 act, the secretary of state may require a person who files a
7 complaint with a false certificate under subsection (6)(c) to do
8 either or both of the following:

9 (a) Pay to the secretary of state some or all of the expenses
10 incurred by the secretary of state as a direct result of the filing
11 of the complaint.

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

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

20 (17) The secretary of state may waive the filing of a campaign
21 statement required under section 33, 34, or 35 if the closing date
22 of the particular campaign statement falls on the same or a later
23 date as the closing date of the next campaign statement filed by
24 the same person, or if the period that would be otherwise covered
25 by the next campaign statement filed by the same person is 10 days
26 or less.

27 (18) The clerk of each county shall do all of the following:

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

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

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

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