

# SENATE BILL No. 113

January 28, 2009, Introduced by Senators McMANUS, GARCIA, JANSEN and KAHN 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.

12           (d) Prepare forms, instructions, and manuals required under

1 this act.

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

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

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

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

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

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

25 (3) Under extenuating circumstances, the secretary of state  
26 may issue a notice extending for not more than 30 business days the  
27 period during which the secretary of state shall respond to a

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

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

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

27 (6) A complaint under subsection (5) shall satisfy all of the

1 following requirements:

2 (a) Be signed by the complainant.

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

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

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

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

24 (9) The secretary of state shall investigate the allegations  
25 under the rules promulgated under this act. ~~Every 60 days after a~~  
26 ~~complaint that meets the requirements of subsection (6) is filed~~  
27 ~~and until the matter is terminated, the secretary of state shall~~

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

4 (10) ~~IF~~ **NO LATER THAN 60 BUSINESS DAYS AFTER RECEIPT OF A**  
5 **REBUTTAL STATEMENT SUBMITTED UNDER SUBSECTION (5), OR IF NO**  
6 **RESPONSE OR REBUTTAL IS RECEIVED UNDER SUBSECTION (5),** the  
7 secretary of state ~~determines that~~ **SHALL POST ON THE SECRETARY OF**  
8 **STATE'S INTERNET WEBSITE WHETHER OR NOT** there may be reason to  
9 believe that a violation of this act has occurred. **IF THE SECRETARY**  
10 **OF STATE DETERMINES THAT THERE MAY BE REASON TO BELIEVE THAT A**  
11 **VIOLATION OF THIS ACT OCCURRED,** the secretary of state shall  
12 endeavor to correct the violation or prevent a further violation by  
13 using informal methods such as a conference, conciliation, or  
14 persuasion, and may enter into a conciliation agreement with the  
15 person involved. Unless violated, a conciliation agreement is a  
16 complete bar to any further action with respect to matters covered  
17 in the conciliation agreement. If, **AFTER 30 BUSINESS DAYS,** the  
18 secretary of state is unable to correct or prevent further  
19 violation by these informal methods, the secretary of state ~~may~~  
20 ~~refer~~ **SHALL DO EITHER OF THE FOLLOWING:**

21 (A) **REFER** the matter to the attorney general for the  
22 enforcement of ~~a~~ **ANY** criminal penalty provided by this act. ~~or~~  
23 ~~commence~~ **IF THE SECRETARY OF STATE REFERS A MATTER TO THE ATTORNEY**  
24 **GENERAL UNDER THIS SUBSECTION, THE ATTORNEY GENERAL MAY REFER THE**  
25 **MATTER TO THE PROSECUTING ATTORNEY OF THE COUNTY WHERE THE**  
26 **VIOLATION OCCURRED FOR THE ENFORCEMENT OF ANY CRIMINAL PENALTY**  
27 **PROVIDED BY THIS ACT.**

1           **(B) COMMENCE** a hearing as provided in subsection (11) **FOR**  
2 **ENFORCEMENT OF ANY CIVIL VIOLATION.**

3           (11) The secretary of state ~~may~~**SHALL** commence a hearing to  
4 determine whether a civil violation of this act has occurred. A  
5 ~~hearing shall not be commenced during the period beginning 30 days~~  
6 ~~before an election in which the committee has received or expended~~  
7 ~~money and ending the day after that election except with the~~  
8 ~~consent of the person suspected of committing a civil violation.~~  
9 The hearing shall be conducted in accordance with the procedures  
10 set forth in chapter 4 of the administrative procedures act of  
11 1969, 1969 PA 306, MCL 24.271 to 24.287. If after a hearing the  
12 secretary of state determines that a violation of this act has  
13 occurred, the secretary of state ~~may~~**SHALL** issue an order requiring  
14 the person to pay a civil fine equal to **TRIPLE** the amount of the  
15 improper contribution or expenditure plus not more than \$1,000.00  
16 for each violation.

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

24           (13) When a report or statement is filed under this act, the  
25 secretary of state shall review the report or statement and may  
26 investigate an apparent violation of this act under the rules  
27 promulgated under this act. If the secretary of state determines

1 that there may be reason to believe a violation of this act has  
2 occurred and the procedures prescribed in subsection (10) have been  
3 complied with, the secretary of state may refer the matter to the  
4 attorney general for the enforcement of a criminal penalty provided  
5 by this act, or commence a hearing under subsection (11) to  
6 determine whether a civil violation of this act has occurred.

7 **(14) NO LATER THAN 60 BUSINESS DAYS AFTER A MATTER IS REFERRED**  
8 **TO THE ATTORNEY GENERAL OR COUNTY PROSECUTING ATTORNEY FOR**  
9 **ENFORCEMENT OF A CRIMINAL PENALTY, THE ATTORNEY GENERAL OR COUNTY**  
10 **PROSECUTING ATTORNEY SHALL DETERMINE WHETHER TO PROCEED WITH**  
11 **ENFORCEMENT OF THAT PENALTY.**

12 (15) ~~(14)~~—Unless otherwise specified in this act, a person who  
13 violates a provision of this act is subject to a civil fine of not  
14 more than \$1,000.00 for each violation. A civil fine is in addition  
15 to, but not limited by, a criminal penalty prescribed by this act.

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

20 (a) Pay to the secretary of state some or all of the expenses  
21 incurred by the secretary of state as a direct result of the filing  
22 of the complaint.

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

27 (17) ~~(16)~~—There is no private right of action, either in law



1 or in equity, under this act. The remedies provided in this act are  
2 the exclusive means by which this act may be enforced and by which  
3 any harm resulting from a violation of this act may be redressed.

4 (18) ~~(17)~~—The secretary of state may waive the filing of a  
5 campaign statement required under section 33, 34, or 35 if the  
6 closing date of the particular campaign statement falls on the same  
7 or a later date as the closing date of the next campaign statement  
8 filed by the same person, or if the period that would be otherwise  
9 covered by the next campaign statement filed by the same person is  
10 10 days or less.

11 (19) ~~(18)~~—The clerk of each county shall do all of the  
12 following:

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

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

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

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