

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Reps. Opsommer and Shirkey

ENROLLED HOUSE BILL No. 5086

AN ACT to amend 1976 PA 388, entitled “An act to regulate political activity; to regulate campaign financing; to restrict campaign contributions and expenditures; to require campaign statements and reports; to regulate anonymous contributions; to regulate campaign advertising and literature; to provide for segregated funds for political purposes; to provide for the use of public funds for political purposes; to create certain funds; to provide for reversion, retention, or refunding of unexpended balances in certain funds; to require other statements and reports; to regulate acceptance of certain gifts, payments, and reimbursements; to prescribe the powers and duties of certain state departments and state and local officials and employees; to provide appropriations; to prescribe penalties and provide remedies; and to repeal certain acts and parts of acts,” by amending sections 4, 6, 11, 15, and 57 (MCL 169.204, 169.206, 169.211, 169.215, and 169.257), section 4 as amended by 1989 PA 95, section 6 as amended by 2003 PA 69, section 11 as amended by 1996 PA 590, and sections 15 and 57 as amended by 2001 PA 250.

The People of the State of Michigan enact:

Sec. 4. (1) “Contribution” means a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question.

(2) Contribution includes the full purchase price of tickets or payment of an attendance fee for events such as dinners, luncheons, rallies, testimonials, and other fund-raising events; an individual’s own money or property other than the individual’s homestead used on behalf of that individual’s candidacy; the granting of discounts or rebates not available to the general public; or the granting of discounts or rebates by broadcast media and newspapers not extended on an equal basis to all candidates for the same office; and the endorsing or guaranteeing of a loan for the amount the endorser or guarantor is liable. Except for the purposes of section 57, contribution does not include a contribution to a federal candidate or a federal committee.

(3) Contribution does not include any of the following:

(a) Volunteer personal services provided without compensation, or payments of costs incurred of less than \$500.00 in a calendar year by an individual for personal travel expenses if the costs are voluntarily incurred without any understanding or agreement that the costs shall be, directly or indirectly, repaid.

(b) Food and beverages, not to exceed \$100.00 in value during a calendar year, which are donated by an individual and for which reimbursement is not given.

(c) An offer or tender of a contribution if expressly and unconditionally rejected, returned, or refunded in whole or in part within 30 business days after receipt.

Sec. 6. (1) "Expenditure" means a payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question. Expenditure includes, but is not limited to, any of the following:

(a) A contribution or a transfer of anything of ascertainable monetary value for purposes of influencing the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question.

(b) Except as provided in subsection (2)(f) or (g), an expenditure for voter registration or get-out-the-vote activities made by a person who sponsors or finances the activity or who is identified by name with the activity.

(c) Except as provided in subsection (2)(f) or (g), an expenditure made for poll watchers, challengers, distribution of election day literature, canvassing of voters to get out the vote, or transporting voters to the polls.

(d) Except as provided in subsection (2)(c), the cost of establishing and administering a payroll deduction plan to collect and deliver a contribution to a committee.

(2) Expenditure does not include any of the following:

(a) An expenditure for communication by a person with the person's paid members or shareholders and those individuals who can be solicited for contributions to a separate segregated fund under section 55.

(b) An expenditure for communication on a subject or issue if the communication does not support or oppose a ballot question or candidate by name or clear inference.

(c) An expenditure for the establishment, administration, or solicitation of contributions to a separate segregated fund if that expenditure was made by the person who established the separate segregated fund as authorized under section 55.

(d) An expenditure by a broadcasting station, newspaper, magazine, or other periodical or publication for a news story, commentary, or editorial in support of or opposition to a candidate for elective office or a ballot question in the regular course of publication or broadcasting.

(e) An offer or tender of an expenditure if expressly and unconditionally rejected or returned.

(f) An expenditure for nonpartisan voter registration or nonpartisan get-out-the-vote activities made by an organization that is exempt from federal income tax under section 501(c)(3) of the internal revenue code of 1986, 26 USC 501, or any successor statute.

(g) An expenditure for nonpartisan voter registration or nonpartisan get-out-the-vote activities performed under chapter XXIII of the Michigan election law, 1954 PA 116, MCL 168.491 to 168.524, by the secretary of state and other registration officials who are identified by name with the activity.

(h) An expenditure by a state central committee of a political party or a person controlled by a state central committee of a political party for the construction, purchase, or renovation of 1 or more office facilities in Ingham county if the facility is not constructed, purchased, or renovated for the purpose of influencing the election of a candidate in a particular election. Items excluded from the definition of expenditure under this subdivision include expenditures approved in federal election commission advisory opinions 1993-9, 2001-1, and 2001-12 as allowable expenditures under the federal election campaign act of 1971, Public Law 92-225, 2 USC 431 to 457, and regulations promulgated under that act, regardless of whether those advisory opinions have been superseded.

(i) Except for the purposes of section 57, an expenditure to or for a federal candidate or a federal committee.

Sec. 11. (1) "Payroll deduction plan" means any system in which an employer deducts any amount of money from the wages, earnings, or compensation of an employee.

(2) "Person" means a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly.

(3) "Political committee" means a committee that is not a candidate committee, political party committee, independent committee, or ballot question committee.

(4) "Political merchandise" means goods such as bumper stickers, pins, hats, beverages, literature, or other items sold by a person at a fund raiser or to the general public for publicity or for the purpose of raising funds to be used in supporting or opposing a candidate for nomination for or election to an elective office or in supporting or opposing the qualification, passage, or defeat of a ballot question.

(5) "Political party" means a political party that has a right under law to have the names of its candidates listed on the ballot in a general election.

(6) "Political party committee" means a state central, district, or county committee of a political party that is a committee. Each state central committee shall designate the official party county and district committees. There shall not be more than 1 officially designated political party committee per county and per congressional district.

(7) "Public body" means 1 or more of the following:

(a) A state agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.

(b) The legislature or an agency, board, commission, or council in the legislative branch of state government.

(c) A county, city, township, village, intercounty, intercity, or regional governing body; a council, school district, special district, or municipal corporation; or a board, department, commission, or council or an agency of a board, department, commission, or council.

(d) Any other body that is created by state or local authority or is primarily funded by or through state or local authority, which body exercises governmental or proprietary authority or performs a governmental or proprietary function.

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

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

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

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

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

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

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

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

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

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

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

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

(5) A person may file with the secretary of state a complaint that alleges a violation of this act. Within 5 business days after a complaint that meets the requirements of subsection (6) is filed, the secretary of state shall give notice to the person against whom the complaint is filed. The notice shall include a copy of the complaint. Within 15 business days after this notice is provided, the person against whom the complaint was filed may submit to the secretary of state a response. The secretary of state may extend the period for submitting a response an additional 15 business days for

good cause. The secretary of state shall provide a copy of a response received to the complainant. Within 10 business days after receiving a copy of the response, the complainant may submit to the secretary of state a rebuttal statement. The secretary of state may extend the period for submitting a rebuttal statement an additional 10 business days for good cause. The secretary of state shall provide a copy of the rebuttal statement to the person against whom the complaint was filed.

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

(a) Be signed by the complainant.

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

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

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

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

(9) The secretary of state shall investigate the allegations under the rules promulgated under this act. Every 60 days after a complaint that meets the requirements of subsection (6) is filed and until the matter is terminated, the secretary of state shall mail to the complainant and to the alleged violator notice of the action taken to date by the secretary of state and the reasons for the action or nonaction.

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

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

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

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

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

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

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

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

(16) Except as otherwise provided in section 57, there is no private right of action, either in law or in equity, under this act. Except as otherwise provided in section 57, the remedies provided in this act are the exclusive means by which this act may be enforced and by which any harm resulting from a violation of this act may be redressed.

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

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

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

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

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

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

Sec. 57. (1) A public body or a person acting for a public body shall not use or authorize the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under section 4(3)(a). The prohibition under this subsection includes, but is not limited to, using or authorizing the use of public resources to establish or administer a payroll deduction plan to directly or indirectly collect or deliver a contribution to, or make an expenditure for, a committee. Advance payment or reimbursement to a public body does not cure a use of public resources otherwise prohibited by this subsection. This subsection does not apply to any of the following:

(a) The expression of views by an elected or appointed public official who has policy making responsibilities.

(b) The production or dissemination of factual information concerning issues relevant to the function of the public body.

(c) The production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, magazine, or other periodical or publication in the regular course of broadcasting or publication.

(d) The use of a public facility owned or leased by, or on behalf of, a public body if any candidate or committee has an equal opportunity to use the public facility.

(e) The use of a public facility owned or leased by, or on behalf of, a public body if that facility is primarily used as a family dwelling and is not used to conduct a fund-raising event.

(f) An elected or appointed public official or an employee of a public body who, when not acting for a public body but is on his or her own personal time, is expressing his or her own personal views, is expending his or her own personal funds, or is providing his or her own personal volunteer services.

(2) If the secretary of state has dismissed a complaint filed under section 15(5) alleging that a public body or person acting for a public body used or authorized the use of public resources to establish or administer a payroll deduction plan to collect or deliver a contribution to, or make an expenditure for, a committee in violation of this section, or if the secretary of state enters into a conciliation agreement under section 15(10) that does not prevent a public body or a person acting for a public body to use or authorize the use of public resources to establish or administer a payroll deduction plan to collect or deliver a contribution to, or make an expenditure for, a committee in violation of this section, the following apply:

(a) The complainant or any other person who resides, or has a place of business, in the jurisdiction where the use or authorization of the use of public resources occurred may bring a civil action against the public body or person acting for the public body to seek declaratory, injunctive, mandamus, or other equitable relief and to recover losses that a public body suffers from the violation of this section.

(b) If the complainant or any other person who resides, or has a place of business, in the jurisdiction where the use or authorization of the use of public resources occurred prevails in an action initiated under this subsection, a court shall award the complainant or any other person necessary expenses, costs, and reasonable attorney fees.

(c) Any amount awarded or equitable relief granted by a court under this subsection may be awarded or granted against the public body or an individual acting for the public body, or both, that violates this section, as determined by the court.

(d) A complainant or any other person who resides, or has a place of business, in the jurisdiction where the use or authorization of the use of public resources occurred may bring a civil action under this subsection in any county in which venue is proper. Process issued by a court in which an action is filed under this subsection may be served anywhere in this state.

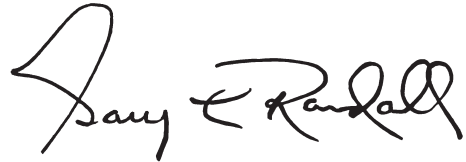
(3) A person who knowingly violates this section is guilty of a misdemeanor punishable, if the person is an individual, by a fine of not more than \$1,000.00 or imprisonment for not more than 1 year, or both, or if the person is not an individual, by 1 of the following, whichever is greater:

(a) A fine of not more than \$20,000.00.

(b) A fine equal to the amount of the improper contribution or expenditure.

Enacting section 1. It is the policy of this state that a public body shall maintain strict neutrality in each election and that a public body or a person acting on behalf of a public body shall not attempt to influence the outcome of an election held in the state. If there is a perceived ambiguity in the interpretation of section 57, that section shall be construed to best effectuate the policy of strict neutrality by a public body in an election.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor