

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

Introduced by Senator Robertson

ENROLLED SENATE BILL No. 824

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 15, 32, 34, 36, 47, and 55 (MCL 169.215, 169.232, 169.234, 169.236, 169.247, and 169.255), section 15 as amended by 2012 PA 31, section 32 as amended by 1999 PA 236, section 34 as amended by 1999 PA 238, section 36 as amended by 1996 PA 590, section 47 as amended by 2001 PA 250, and section 55 as amended by 1995 PA 264.

The People of the State of Michigan enact:

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 mailed, 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 the response is mailed, 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. If the violation involves the secretary of state, the immediate family of the secretary of state, or a campaign or committee with which the secretary of state is connected, directly or indirectly, the secretary of state shall refer the matter to the attorney general to determine whether a violation of this act has occurred.

(10) No later than 60 business days after receipt of a rebuttal statement submitted under subsection (5), or if no response or rebuttal is received under subsection (5), the secretary of state shall post on the secretary of state's internet website whether or not there may be reason to believe that a violation of this act has occurred. If the secretary of state determines that there may be reason to believe that a violation of this act occurred, the secretary of state shall, within 30 days of that determination, post on the secretary of state's internet website any complaint, response, or rebuttal statement received under subsection (5) regarding that violation and any correspondence regarding that violation between the secretary of state and the complainant or the person against whom the complaint was filed. If the secretary of state determines that there may be reason to believe that a violation of this act 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 civil or criminal action with respect to matters covered in the conciliation agreement. The secretary of state shall, within 30 days after a conciliation agreement is signed, post that agreement on the secretary of state's internet website. If, after 90 business days, the secretary of state is unable to correct or prevent further violation by these informal methods, the secretary of state shall do either of the following:

(a) Refer the matter to the attorney general for the enforcement of any criminal penalty provided by this act.

(b) Commence a hearing as provided in subsection (11) for enforcement of any civil violation.

(11) The secretary of state may commence a hearing to determine whether a civil violation of this act has occurred. 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 triple 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) No later than 60 business days after a matter is referred to the attorney general for enforcement of a criminal penalty, the attorney general shall determine whether to proceed with enforcement of that penalty.

(15) 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.

(16) 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.

(17) 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. The criminal penalties provided by this act may only be enforced by the attorney general and only upon referral by the secretary of state as provided under subsection (10) or (13).

(18) 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.

(19) 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. 32. (1) A committee, candidate, treasurer, or other individual designated as responsible for the committee's record keeping, record preparation, or report filing shall report a late contribution by filing with the filing officer within 48 hours after its receipt the full name, street address, occupation, employer, and principal place of business of the contributor.

(2) Filing of a report of a late contribution under subsection (1) may be by any written means of communication and need not contain an original signature.

(3) A late contribution shall be reported on subsequent campaign statements without regard to reports filed under subsection (1). If a campaign statement has not been filed, a late contribution may be reported, if practicable, in the campaign statement and need not, therefore, be reported in a subsequent campaign statement.

(4) A committee, candidate, treasurer, or other individual designated as responsible for the committee's record keeping, report preparation, or report filing who fails to report a late contribution as required by subsection (1) shall pay a late filing fee, that shall not exceed the lesser of the following:

(a) The total amount of the contributions omitted from the late contribution reports.

(b) \$2,000.00 determined as follows:

(i) Twenty-five dollars for each business day the report remains unfiled.

(ii) An additional \$25.00 for each business day after the first 3 business days the report remains unfiled.

(iii) An additional \$50.00 for each business day after the first 10 business days the report remains unfiled.

(5) A committee, other than a candidate committee, is only required to file a report of a late contribution for an election during which the committee made expenditures for the purpose of influencing the nomination or election of a candidate or for the qualification, passage, or defeat of a ballot question after the closing date of the last campaign statement required to be filed before an election. This subsection is retroactive and takes effect January 1, 2010.

(6) This state by appropriation or a county shall reimburse or waive any late filing fee paid or assessed under subsection (4) or (5) between January 1, 2010 and the effective date of the amendatory act that added this subsection. This subsection only applies to committees that have filed all other campaign statements required under this act in a timely manner. This subsection does not apply to candidate committees.

(7) As used in this section, for contributions made before the effective date of the amendatory act that added subsection (6), "late contribution" means a contribution of \$200.00 or more received after the closing date of the last campaign statement required to be filed before an election. For contributions made on or after the effective date of the amendatory act that added subsection (6), late contribution means, for a candidate committee, contributions from the same contributor with a cumulative total of \$500.00 or more received after the closing date of the last campaign statement required to be filed before an election. For contributions made on or after the effective date of the amendatory act that added subsection (6), late contribution means, for a committee other than a candidate committee, contributions from the same contributor with a cumulative total of \$2,500.00 or more received after the closing date of the last campaign statement required to be filed before an election.

Sec. 34. (1) A ballot question committee shall file a campaign statement as required by this act according to the following schedule:

(a) A preelection campaign statement, the closing date of which shall be the sixteenth day before the election, shall not be filed later than the eleventh day before the election.

(b) A postelection campaign statement, the closing date of which shall be the twentieth day following the election, shall not be filed later than the thirtieth day following an election. If all liabilities of the committee are paid before the closing date and additional contributions are not expected, the campaign statement may be filed at any time after the election, but not later than the thirtieth day following the election.

(c) Campaign statements not later than the following dates every year:

(i) February 15 with a closing date of February 10 of that year.

(ii) April 25 with a closing date of April 20 of that year.

(iii) July 25 with a closing date of July 20 of that year.

(d) In every odd numbered year, a campaign statement not later than October 25 with a closing date of October 20 of that year.

(2) A ballot question committee supporting or opposing a statewide ballot question shall file a campaign statement, of which the closing date shall be the twenty-eighth day after the filing of the petition form, not later than 35 days after the petition form is filed under section 483a of the Michigan election law, 1954 PA 116, MCL 168.483a.

(3) If a ballot question committee supporting or opposing a statewide ballot question fails to file a preelection statement under this section, that committee or its treasurer shall pay a late filing fee for each business day the statement remains not filed in violation of this section, not to exceed \$1,000.00, pursuant to the following schedule:

(a) First day—\$25.00.

(b) Second day—\$50.00.

(c) Third day—\$75.00.

(d) Fourth day and for each subsequent day that the statement remains unfiled—\$100.00.

(4) If a treasurer or other individual designated as responsible for the record keeping, report preparation, or report filing of a ballot question committee supporting or opposing a statewide ballot question fails to file a statement, other than a preelection statement, under this section, that committee, treasurer, or other designated individual shall pay a late filing fee. If the committee has raised \$10,000.00 or less during the previous 2 years, the late filing fee shall be \$25.00 for each business day the campaign statement remains unfiled, but not to exceed \$1,000.00. If the committee has raised more than \$10,000.00 during the previous 2 years, the late filing fee shall be \$50.00 for each business day the campaign statement remains unfiled, but not to exceed \$2,000.00.

(5) If a treasurer or other individual designated as responsible for the record keeping, report preparation, or report filing of a ballot question committee supporting or opposing other than a statewide ballot question fails to file a statement under this section, that committee, treasurer, or other designated individual shall pay a late filing fee. If the committee has raised \$10,000.00 or less during the previous 2 years, the late filing fee shall be \$25.00 for each business day the campaign statement remains unfiled, but not to exceed \$1,000.00. If the committee has raised more than \$10,000.00 during the previous 2 years, the late filing fee shall be \$50.00 for each business day the campaign statement remains unfiled, but not to exceed \$2,000.00.

(6) If a treasurer or other individual designated as responsible for the record keeping, report preparation, or report filing of a ballot question committee fails to file a statement as required by subsection (1) or (2) for more than 7 days, that treasurer or other designated individual is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 90 days, or both.

(7) If a treasurer or other individual designated as responsible for the record keeping, report preparation, or report filing of a ballot question committee knowingly files an incomplete or inaccurate statement or report required by this section, that treasurer or other designated individual is subject to a civil fine of not more than \$1,000.00 or the amount of the undisclosed contribution, whichever is greater.

Sec. 36. (1) A candidate committee for a state elective office or a judicial office shall file a copy of the campaign statement required under this act with the secretary of state. The secretary of state shall reproduce the copy and transmit the reproduction to the clerk of the county of residence of the candidate.

(2) A ballot question committee supporting or opposing a statewide ballot question shall file a copy of the campaign statement required under this act with the secretary of state and with the clerk of the most populous county in the state. Except as otherwise provided in this subsection, a ballot question committee supporting or opposing a ballot question to be voted upon in more than 1 county, but not statewide, shall file a copy of the campaign statement required under this act with the clerk of the county in which the greatest number of registered voters eligible to vote on the ballot question reside. Except as otherwise provided in this subsection, a ballot question committee supporting or opposing a ballot question to be voted upon within a single county shall file a copy of the campaign statement required under this act only with the clerk of that county. If a ballot question committee is registered with the secretary of state and is supporting or opposing a nonstatewide ballot question, that ballot question committee is only required to file the campaign statement required under this act with the secretary of state.

(3) A political party committee shall file a copy of the campaign statement required under this act with the secretary of state. The secretary of state shall reproduce a copy of the campaign statement of a political party committee that is a county committee and file the copy with the clerk of the county where the county committee operates.

(4) A committee supporting or opposing a candidate for local elective office, if the office is to be voted on in more than 1 county but not statewide, shall file a copy of the campaign statement required under this act with the clerk of the county in which the greatest number of registered voters eligible to vote on the office reside.

(5) If a committee is registered with the secretary of state and is supporting or opposing the recall of a local elective officeholder, that committee is only required to file the campaign statement required under this act with the secretary of state.

(6) A committee not covered under subsection (1), (2), (3), (4), or (5) shall file a copy of the campaign statement required under this act with the secretary of state, except that a committee reporting contributions or expenditures for a candidate within only 1 county shall file a statement only with the clerk of that county.

(7) A local unit of government that receives copies of campaign statements under this section shall make the statements available for public inspection and reproduction during regular business hours of the local unit of government. The local unit of government shall make the statements available as soon as practicable after receipt, but not later than the third business day following the day on which they are received.

Sec. 47. (1) Except as otherwise provided in this subsection and subject to subsections (3) and (4), a billboard, placard, poster, pamphlet, or other printed matter having reference to an election, a candidate, or a ballot question, shall bear upon it the name and address of the person paying for the matter. Except as otherwise provided in this subsection and subject to subsections (3) and (4), if the printed matter relating to a candidate is an independent expenditure that is not authorized in writing by the candidate committee of that candidate, the printed matter shall contain the following disclaimer: "Not authorized by any candidate committee". An individual other than a candidate is not subject to this

subsection if the individual is acting independently and not acting as an agent for a candidate or any committee. This subsection does not apply to communications between a separate segregated fund established under section 55 and individuals who can be solicited for contributions to that separate segregated fund under section 55.

(2) A radio or television paid advertisement having reference to an election, a candidate, or a ballot question shall identify the sponsoring person as required by the federal communications commission, shall bear the name of the person paying for the advertisement, and shall be in compliance with subsection (3) and with the following:

(a) If the radio or television paid advertisement relates to a candidate and is an independent expenditure, the advertisement shall contain the following disclaimer: "Not authorized by any candidate".

(b) If the radio or television paid advertisement relates to a candidate and is not an independent expenditure but is paid for by a person other than the candidate to which it is related, the advertisement shall contain the following disclaimer: "Authorized by".

(name of candidate or name of candidate committee)

(3) The size and placement of an identification or disclaimer required by this section shall be determined by rules promulgated by the secretary of state. The rules may exempt printed matter and certain other items such as campaign buttons or balloons, the size of which makes it unreasonable to add an identification or disclaimer, from the identification or disclaimer required by this section.

(4) Except for a candidate committee's printed matter or radio or television paid advertisements, each identification or disclaimer required by this section shall also indicate that the printed matter or radio or television paid advertisement is paid for "with regulated funds". Printed matter or a radio or television paid advertisement that is not subject to this act shall not bear the statement required by this subsection.

(5) A person who knowingly violates this section is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 93 days, or both.

Sec. 55. (1) A corporation organized on a for profit or nonprofit basis, a joint stock company, a domestic dependent sovereign, or a labor organization formed under the laws of this or another state or foreign country may make an expenditure for the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes. A separate segregated fund established under this section shall be limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, political committees, independent committees, and other separate segregated funds.

(2) Contributions for a separate segregated fund established by a corporation, organized on a for profit basis, or a joint stock company under this section may be solicited from any of the following persons or their spouses:

(a) Stockholders of the corporation or company.

(b) Officers and directors of the corporation or company.

(c) Employees of the corporation or company who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(3) Contributions for a separate segregated fund established under this section by a corporation organized on a nonprofit basis may be solicited from any of the following persons or their spouses:

(a) Members of the corporation who are individuals.

(b) Stockholders of members of the corporation.

(c) Officers or directors of members of the corporation.

(d) Employees of the members of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(e) Employees of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(4) Contributions for a separate segregated fund established under this section by a labor organization may be solicited from any of the following persons or their spouses:

(a) Members of the labor organization who are individuals.

(b) Officers or directors of the labor organization.

(c) Employees of the labor organization who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(5) Contributions for a separate segregated fund established under this section by a domestic dependent sovereign may be solicited from an individual who is a member of any domestic dependent sovereign.

(6) Contributions shall not be obtained for a separate segregated fund established under this section by use of coercion or physical force, by making a contribution a condition of employment or membership, or by using or threatening to use job discrimination or financial reprisals. A corporation organized on a for profit or nonprofit basis, a joint stock

company, a domestic dependent sovereign, or a labor organization shall not solicit or obtain contributions for a separate segregated fund established under this section from an individual described in subsection (2), (3), (4), or (5) on an automatic or passive basis including but not limited to a payroll deduction plan or reverse checkoff method. A corporation organized on a for profit or nonprofit basis, a joint stock company, a domestic dependent sovereign, or a labor organization may solicit or obtain contributions for a separate segregated fund established under this section from an individual described in subsection (2), (3), (4), or (5) on an automatic basis, including but not limited to a payroll deduction plan, only if the individual who is contributing to the fund affirmatively consents to the contribution at least once in every calendar year.

(7) A person who knowingly violates this section is guilty of a felony punishable, if the person is an individual, by a fine of not more than \$5,000.00 or imprisonment for not more than 3 years, or both, or, if the person is not an individual, by a fine of not more than \$10,000.00.

(8) If a corporation, joint stock company, domestic dependent sovereign, or labor organization that obtains contributions for a separate segregated fund from individuals described in subsection (2), (3), (4), or (5) pays to 1 or more of those individuals a bonus or other remuneration for the purpose of reimbursing those contributions, then that corporation, joint stock company, domestic dependent sovereign, or labor organization is subject to a civil fine equal to 2 times the total contributions obtained from all individuals for the separate segregated fund during that calendar year.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gay E. Randall

Clerk of the House of Representatives

Approved

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Governor