LEGAL DEFENSE FUND ACT

Act 288 of 2008

AN ACT to regulate and to require certain reports to be filed that document contributions for purposes of defending an elected official in a criminal, civil, or administrative action; to regulate contributions made for purposes of defending an elected official in a criminal, civil, or administrative action; to prescribe certain powers and duties of the secretary of state as to legal defense funds; and to prescribe criminal penalties and civil sanctions.

History: 2008, Act 288, Imd. Eff. Oct. 6, 2008

The People of the State of Michigan enact:

CAUTION! This document is from an archive and may contain outdated information.

15.521 Short title.

Sec. 1.

This act shall be known and may be cited as the "legal defense fund act".

History: 2008, Act 288, Imd. Eff. Oct. 6, 2008

15.523 Definitions.

Sec. 3.

As used in this act:

(a) "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 or allocated to the purpose of defending an elected official in a criminal, civil, or administrative action that arises directly out of the conduct of the elected official's governmental duties. Contribution includes an officer holder's own money or property, other than the officer holder's homestead, used on behalf of the officer holder's defense, the granting of discounts or rebates not available to the general public, and the endorsing or guaranteeing of a loan for the amount the endorser or guarantor is liable. Contribution does not include an offer or tender of a contribution if expressly and unconditionally rejected, returned, or refunded within 30 business days after receipt.

(b) "Elected official" means an individual who holds an elective office in state or local government in this state.

(c) "Elective office" means a public office filled by an election. A person who is appointed to fill a vacancy in a public office that is ordinarily elective holds an elective office. Elective office does not include the office of precinct delegate. Elective office does not include a school board member in a school district that has a pupil membership of 2,400 or less enrolled on the most recent pupil membership count day. Elective office does not include a federal office.

(d) "Financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.

(e) "Legal defense fund" means all contributions received, held, or expended for the legal defense of an elected official. For purposes of this act, a legal defense fund does not include a fund of a local government association that is an exempt organization under section 501(c)(4) of the internal revenue code of 1986, 26 USC 501, or of a local government organization, if money in the organization's fund is composed of money that is excluded from the definition of gross income under section 115 of the internal revenue code of 1986, 26 USC 115.

(f) "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.

(g) "Treasurer" means the individual designated as responsible for a legal defense fund's record keeping, report preparation, or report filing or, in the absence of such an individual, the elected official who is the beneficiary of the legal defense fund.

History: 2008, Act 288, Imd. Eff. Oct. 6, 2008

15.525 Statement of organization; filing; information; amended statement; late filing fee; failure to file statement; dissolution.

Sec. 5.

(1) An elected official who is the beneficiary of a legal defense fund shall file a statement of organization with the secretary of state within 10 days after the earlier of the date the legal defense fund first receives a contribution or first makes an expenditure of a contribution.

(2) A statement of organization required by this section shall include all of the following information:

(a) The name, street address, and telephone number of the legal defense fund. The name of the legal defense fund shall include the first and last names of the elected official who is the beneficiary of the legal defense fund and the words "legal defense fund".

(b) The name, street address, and telephone number of the individual designated as the treasurer of the legal defense fund.

(c) The name and address of the financial institution in which money of the legal defense fund is or is intended to be deposited.

(d) The full name of and office held by the elected official who is the beneficiary of the legal defense fund.

(e) A description of the criminal, civil, or administrative action arising directly out of the conduct of the elected official's duties for which a contribution to or expenditure from the legal defense fund was made.

(3) If any of the information required in a statement of organization under this section changes, the legal defense fund shall file an amended statement of organization when the next transaction report under section 7 is required to be filed.

(4) An elected official who fails to file a statement of organization as required by this section shall pay a late filing fee of $10.00 for each business day the statement remains unfiled. A late filing fee shall not exceed $300.00. An elected official who fails to file a statement of organization under this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both.

(5) When a legal defense fund is dissolved, the elected official shall file a statement of dissolution with the secretary of state, in the form required by the secretary of state, and shall return any unexpended funds to the contributor of the funds or forward the unexpended funds to the state treasurer for deposit into the general fund of the state or to the state bar of Michigan for deposit into the state bar of Michigan client protection fund.

CAUTION! This document is from an archive and may contain outdated information.

History: 2008, Act 288, Imd. Eff. Oct. 6, 2008

15.527 Transaction report.

Sec. 7.

(1) From the earlier of the date that a legal defense fund receives its first contribution or makes its first expenditure of a contribution until the date the elected official files a statement of dissolution under section 5, the treasurer of a legal defense fund shall file transaction reports according to the schedule in subsection (2). A transaction report shall disclose all of the following information:

(a) The legal defense fund's name, address, and telephone number and the full name, residential and business addresses, and telephone numbers of the legal defense fund's treasurer.

(b) The following information about each person from whom a contribution is received during the covered period:

(i) The person's full name.

(ii) The person's street address.

(iii) The amount contributed.

(iv) The date on which each contribution was received.

(v) The cumulative amount contributed by that person.

(vi) If the person is an individual whose cumulative contributions are more than $100.00, the person's occupation, employer, and principal place of business.

(c) The following information itemized as to each expenditure from the legal defense fund that exceeds $50.00 and as to expenditures made to 1 person that cumulatively total $50.00 or more during a covered period:

(i) The amount of the expenditure.

(ii) The name and address of the person to whom the expenditure is made.

(iii) The purpose of the expenditure.

(iv) The date of the expenditure.

(2) Subject to subsections (3) and (4), the treasurer of a legal defense fund shall file a transaction report on or before each of the following dates covering the period beginning on the day after the closing date of the preceding transaction report and ending on the indicated closing date:

(a) January 25, with a closing date of December 31 of the previous year.

(b) April 25, with a closing date of March 31.

(c) July 25, with a closing date of June 30.

(d) October 25, with a closing date of September 30.

(3) The beginning date of the first transaction report required by this section shall be the date the first contribution is received by the legal defense fund.

(4) The treasurer of a legal defense fund shall file a final transaction report with its statement of dissolution under section 5. The final transaction report shall cover the period beginning on the day after the closing date of the preceding transaction report and ending on the latest date that the legal defense fund received a contribution, made an expenditure, or transferred unexpended funds and dissolved.

(5) A transaction report required by this section shall include a verification statement, signed by the treasurer for the legal defense fund and the elected official, stating that he or she used all reasonable diligence in preparing the report and that to his or her knowledge the statement is true and complete.

CAUTION! This document is from an archive and may contain outdated information.

(6) A treasurer or other individual designated on the statement of organization as responsible for the legal defense fund's record keeping, report preparation, or report filing shall keep detailed accounts, records, bills, and receipts as required to substantiate the information contained in a statement or report required under this act. The records of a legal defense fund shall be preserved for 5 years and shall be made available for inspection as authorized by the secretary of state. A treasurer who knowingly violates this subsection is subject to a civil fine of not more than $1,000.00.

(7) A treasurer or elected official who knowingly submits false information under this section is guilty of a misdemeanor punishable by imprisonment for not more than 180 days or a fine of not more than $5,000.00, or both.

History: 2008, Act 288, Imd. Eff. Oct. 6, 2008

15.529 Transaction report; late filing fee; failure to file or filing incomplete transaction report as misdemeanor; penalty.

Sec. 9.

(1) If a report required by section 7 is filed late, the legal defense fund or the elected official shall pay a late filing fee. If the legal defense fund has received contributions of $10,000.00 or less during the previous 2 years, the late filing fee shall be $25.00 for each business day the report remains unfiled, but not to exceed $500.00. If the legal defense fund has received contributions of more than $10,000.00 during the previous 2 years, the late filing fee shall be determined as follows, but shall not exceed $1,000.00:

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

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

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

(2) A treasurer who fails to file 2 transaction reports required by section 7, if both of the reports remain unfiled for more than 30 days, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both.

(3) A treasurer who knowingly files an incomplete transaction report is subject to a civil fine of not more than $1,000.00.

History: 2008, Act 288, Imd. Eff. Oct. 6, 2008

15.531 Statement or report; availability; reasonable charge; use for commercial purpose prohibited; preservation; filing fee; determination of compliance with filing requirements; notice of error or omission; corrections; report of uncorrected error or omission or failure to file; filing date.

Sec. 11.

(1) The secretary of state shall make a statement or report required to be filed under this act available for public inspection and reproduction, as soon as practicable, but not later than the third business day following the day on which it is received, during regular business hours of the filing official. The secretary of state shall also make the report or all of the contents of the report available to the public on the internet, without charge, as soon as practicable, at a single website established and maintained by the secretary of state.

CAUTION! This document is from an archive and may contain outdated information.

(2) A copy of a statement or part of a statement shall be provided by the secretary of state at a reasonable charge.

(3) A statement open to the public under this act shall not be used for any commercial purpose.

(4) Except as otherwise provided in this subsection, a statement of organization filed under this act with the secretary of state shall be preserved by the secretary of state for 15 years from the official date of the committee's dissolution. Any other statement or report filed under this act with the secretary of state shall be preserved by the secretary of state for 15 years from the date the filing occurred. Upon a determination that a violation of this act has occurred, all complaints, orders, decisions, or other documents related to that violation shall be preserved by the filing official who is not the secretary of state or the secretary of state for 15 years from the date of the court determination or the date the violation is corrected, whichever is later. Statements and reports filed under this act may be reproduced pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406. After the required preservation period, the statements and reports, or the reproductions of the statements and reports, may be disposed of in the manner prescribed in the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594, and section 11 of the Michigan history center act, 2016 PA 470, MCL 399.811.

(5) A filing official shall not collect a charge for the filing of a required statement or report or for a form upon which the statement or report is to be prepared, except a late filing fee required by this act.

(6) The secretary of state shall determine whether a statement or report filed under this act complies, on its face, with the requirements of this act. The secretary of state shall determine whether a statement or report that is required to be filed under this act is in fact filed. Within 4 business days after the deadline for filing a statement or report under this act, the secretary of state shall give notice to the filer by registered mail of an error or omission in the statement or report and give notice to a person the secretary of state has reason to believe is a person required to and who failed to file a statement or report. A failure to give notice by the secretary of state under this subsection is not a defense to a criminal action against the person required to file.

(7) Within 9 business days after the report or statement is required to be filed, the filer shall make any corrections in the statement or report filed with the secretary of state. If the report or statement was not filed, then the report or statement shall be late filed within 9 business days after the time it was required to be filed and shall be subject to late filing fees.

(8) After 9 business days and before 12 business days have expired after the deadline for filing the statement or report, the secretary of state shall report errors or omissions that were not corrected and failures to file to the attorney general.

(9) A statement or report required to be filed under this act must be filed not later than 5 p.m. of the day in which it is required to be filed. A transaction report that is postmarked by registered or certified mail, or sent by express mail or other overnight delivery service, at least 2 days before the deadline for filing is filed within the prescribed time regardless of when it is actually delivered. Any other statement or report required to be filed under this act that is postmarked by registered or certified mail or sent by express mail or other overnight delivery service on or before the deadline for filing is filed within the prescribed time regardless of when it is actually delivered.

History: 2008, Act 288, Imd. Eff. Oct. 6, 2008 ;-- Am. 2017, Act 183, Eff. Feb. 19, 2018

CAUTION! This document is from an archive and may contain outdated information.

15.533 Contributions.

Sec. 13.

(1) An elected official, or a person on behalf of an elected official, shall not solicit or accept a contribution for the purpose of defending the elected official in a criminal, civil, or administrative action that arises directly out of the conduct of the elected official's governmental duties unless the contribution is included in a legal defense fund that complies with the requirements of this act.

(2) A person shall not make and the elected officer or treasurer of a legal defense fund shall not accept an anonymous contribution. An anonymous contribution to a legal defense fund shall not be deposited into the account the legal defense fund maintains with a financial institution, but shall be given to a person that is exempt from taxation under section 501(c)(3) of the internal revenue code, 26 USC 501. The person receiving the contribution from the legal defense fund shall provide the legal defense fund with a receipt, which shall be retained by the legal defense fund's treasurer.

(3) A contribution shall not be made by a person to another person with the agreement or arrangement that the person receiving the contribution will then transfer that contribution to a particular legal defense fund.

(4) Contributions to a legal defense fund that are received as or converted to the form of money, checks, or other negotiable instruments shall be deposited in a single account in a financial institution for all contributions to the legal defense fund. The treasurer of the legal defense fund shall designate the financial institution that is the official depository of the legal defense fund. A contribution that is received and retained by a legal defense fund shall be maintained in a separate account at the official depository and shall not be deposited in or commingled with any other account of the elected official.

(5) A person who knowingly violates this section is guilty of a misdemeanor punishable as follows:

(a) If the person is an individual, by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both.

(b) If the person is other than an individual, by a fine of not more than $10,000.00.

History: 2008, Act 288, Imd. Eff. Oct. 6, 2008

15.535 Expenditures; violation as misdemeanor; penalty.

Sec. 15.

(1) Except for expenditures upon dissolution that are made as prescribed in section 5 or as provided for an anonymous contribution under section 13, a person shall make expenditures from a legal defense fund only for administration of the fund, attorney fees, or related legal costs, which shall not include direct or indirect payments for media purchases, media consulting, or mass mailings. An expenditure from a legal defense fund shall be made for the legal defense of only the 1 elected official for whom the fund was established.

(2) A person who knowingly violates this section is guilty of a misdemeanor punishable as follows:

(a) If the person is an individual, by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both.

(b) If the person is other than an individual, by a fine of not more than $10,000.00.

History: 2008, Act 288, Imd. Eff. Oct. 6, 2008

CAUTION! This document is from an archive and may contain outdated information

15.537 Scope of act; applicability.

Sec. 17.

This act applies to any contribution made, received, or expended after the effective date of this act and to any contribution received before the effective date of this act that has not been returned to the contributor within 90 days after the effective date of this act.

History: 2008, Act 288, Imd. Eff. Oct. 6, 2008

15.539 Rules; declaratory rulings.

Sec. 19.

The secretary of state may promulgate rules to implement this act and may issue declaratory rulings pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 2008, Act 288, Imd. Eff. Oct. 6, 2008

CAUTION! This document is from an archive and may contain outdated information.