

Act No. 590
Public Acts of 1996
Approved by the Governor
January 20, 1997
Filed with the Secretary of State
January 21, 1997

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Rep. Fitzgerald

Reps. Alley, Bodem, Brewer, Bush, Byl, Clack, Crissman, Curtis, Dalman, DeMars, Geiger, Gernaat, Gilmer, Gire, Gnodtke, Goschka, Green, Hanley, Harder, Hill, Horton, Jaye, Jellema, Jersevic, Johnson, Kaza, Kelly, Kukuk, LaForge, Llewellyn, McBryde, Middaugh, Middleton, Olshove, Oxender, Rhead, Rocca, Ryan, Sikkema, Tesanovich, Varga, Vaughn, Voorhees, Weeks and Wetters named co-sponsors

ENROLLED HOUSE BILL No. 5074

AN ACT to amend sections 8, 9, 11, 15, 36, 45, 52, 57, and 69 of Act No. 388 of the Public Acts of 1976, entitled as amended "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," sections 8, 11, 52, and 69 as amended and section 57 as added by Act No. 264 of the Public Acts of 1995, section 9 as amended by Act No. 411 of the Public Acts of 1994, and sections 15 and 36 as amended by Act No. 95 of the Public Acts of 1989, being sections 169.208, 169.209, 169.211, 169.215, 169.236, 169.245, 169.252, 169.257, and 169.269 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 8, 9, 11, 15, 36, 45, 52, 57, and 69 of Act No. 388 of the Public Acts of 1976, sections 8, 11, 52, and 69 as amended and section 57 as added by Act No. 264 of the Public Acts of 1995, section 9 as amended by Act No. 411 of the Public Acts of 1994, and sections 15 and 36 as amended by Act No. 95 of the Public Acts of 1989, being sections 169.208, 169.209, 169.211, 169.215, 169.236, 169.245, 169.252, 169.257, and 169.269 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 8. (1) "House political party caucus committee" means an independent committee established by a political party caucus of the state house of representatives under section 24a.

(2) "Immediate family" means any child residing in a candidate's household, the candidate's spouse, or any individual claimed by that candidate or that candidate's spouse as a dependent for federal income tax purposes.

(3) "Independent committee" means a committee, other than a political party committee, that before contributing to a candidate committee of a candidate for elective office under section 52(2) or 69(2) files a statement of organization as an independent committee at least 6 months before an election for which it expects to accept contributions or make expenditures in support of or in opposition to a candidate for nomination to or election to an elective office; and receives

contributions from at least 25 persons and makes expenditures not to exceed the limitations of section 52(1) in support of or in opposition to 3 or more candidates for nomination to or election to an elective office in the same calendar year.

Sec. 9. (1) "Incidental expense" means an expenditure that is an ordinary and necessary expense, as described in section 162 of the internal revenue code of 1986, 26 U.S.C. 162, paid or incurred in carrying out the business of an elective office. Incidental expense includes, but is not limited to, any of the following:

- (a) A disbursement necessary to assist, serve, or communicate with a constituent.
- (b) A disbursement for equipment, furnishings, or supplies for the office of the public official.
- (c) A disbursement for a district office if the district office is not used for campaign-related activity.
- (d) A disbursement for the public official or his or her staff, or both, to attend a conference, meeting, reception, or other similar event.
- (e) A disbursement to maintain a publicly owned residence or a temporary residence at the seat of government.
- (f) An unreimbursed disbursement for travel, lodging, meals, or other expenses incurred by the public official, a member of the public official's immediate family, or a member of the public official's staff in carrying out the business of the elective office.
- (g) A donation to a tax-exempt charitable organization, including the purchase of tickets to charitable or civic events.
- (h) A disbursement to a ballot question committee.
- (i) A purchase of tickets for use by that public official and members of his or her immediate family and staff to a fund-raising event sponsored by a candidate committee, independent committee, political party committee, or a political committee that does not exceed \$100.00 per committee in any calendar year.
- (j) A disbursement for an educational course or seminar that maintains or improves skills employed by the public official in carrying out the business of the elective office.
- (k) A purchase of advertisements in testimonials, program books, souvenir books, or other publications if the advertisement does not support or oppose the nomination or election of a candidate.
- (l) A disbursement for consultation, research, polling, and photographic services not related to a campaign.
- (m) A fee paid to a fraternal, veteran, or other service organization.
- (n) A payment of a tax liability incurred as a result of authorized transactions by the candidate committee of the public official.
- (o) A fee for accounting, professional, or administrative services for the candidate committee of the public official.
- (p) A debt or obligation incurred by the candidate committee of a public official for a disbursement authorized by subdivisions (a) to (o), if the debt or obligation was reported in the candidate committee report filed for the year in which the debt or obligation arose.

(2) "Independent expenditure" means an expenditure by a person if the expenditure is not made at the direction of, or under the control of, another person and if the expenditure is not a contribution to a committee.

(3) "In-kind contribution or expenditure" means a contribution or expenditure other than money.

(4) "Loan" means a transfer of money, property, or anything of ascertainable monetary value in exchange for an obligation, conditional or not, to repay in whole or part.

(5) "Local elective office" means an elective office at the local unit of government level. Local elective office also includes judge of the court of appeals, judge of the circuit court, judge of the recorder's court of the city of Detroit, judge of the district court, judge of the probate court, and judge of a municipal court.

(6) "Local unit of government" means a district, authority, county, city, village, township, board, school district, intermediate school district, or community college district.

Sec. 11. (1) "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.

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

(3) "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.

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

(5) "Political party committee" means a state central, district, or county committee of a political party which 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.

(6) "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 the purposes of 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 pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(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 secretary of state has permitted the person requesting the ruling an opportunity to supply 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. The secretary of state may issue an interpretative statement providing an informational response to the question presented. 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 pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, or pursuant to 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 a complaint with the secretary of state alleging a violation of this act. Upon receipt of a complaint, the secretary of state shall investigate the allegations pursuant to the rules promulgated under this act. 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 any criminal penalty provided by this act or commence a hearing pursuant to subsection (6).

(6) 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, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. 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. 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, Act No. 306 of the Public Acts of 1969, being sections 24.301 to 24.306 of the Michigan Compiled Laws. 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.

(7) When a report or statement is filed pursuant to this act, the secretary of state shall review the report or statement and may investigate an apparent violation of this act pursuant to the rules promulgated pursuant to 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 (5) have been complied with, the secretary of state may refer the matter to the attorney general for the enforcement of any criminal penalty provided by this act, or commence a hearing under subsection (6) to determine whether a civil violation of this act has occurred.

(8) 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. Civil fines are in addition to, but not limited by, any criminal penalty prescribed by this act.

(9) There is no private right of action, either in law or in equity, pursuant to this act. 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.

(10) 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.

(11) 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. 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. 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. 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.

(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) A committee not covered under subsection (1), (2), (3), or (4) 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.

(6) 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. 45. (1) A person may transfer any unexpended funds from 1 candidate committee to another candidate committee of that person if the contribution limits prescribed in section 52 or 69 for the candidate committee receiving the funds are equal to or greater than the contribution limits for the candidate committee transferring the funds and if the candidate committees are simultaneously held by the same person. The funds being transferred shall not be considered a qualifying contribution regardless of the amount of the individual contribution being transferred.

(2) Upon termination of a candidate committee, unexpended funds in the candidate committee that are not eligible for transfer to another candidate committee of the person under subsection (1) shall be disbursed as follows:

(a) Given to a political party committee.

(b) Given to a tax exempt charitable organization, as long as the candidate does not become an officer or director of or receive compensation, either directly or indirectly, from that organization.

(c) Returned to the contributors of the funds upon termination of the campaign committee.

(d) If the person was a candidate for the office of state representative, given to a house political party caucus committee.

(e) If the person was a candidate for the office of state senator, given to a senate political party caucus committee.

(f) Given to an independent committee.

(g) Given to a ballot question committee.

Sec. 52. (1) Except as provided in subsection (5) and subject to subsection (8), a person other than an independent committee or a political party committee shall not make contributions to a candidate committee of a candidate for elective office that, with respect to an election cycle, are more than the following:

(a) \$3,400.00 for a candidate for state elective office other than the office of state legislator, or for a candidate for local elective office if the district from which he or she is seeking office has a population of more than 250,000.

(b) \$1,000.00 for a candidate for state senator, or for a candidate for local elective office if the district from which he or she is seeking office has a population of more than 85,000 but 250,000 or less.

(c) \$500.00 for a candidate for state representative, or for a candidate for local elective office if the district from which he or she is seeking office has a population of 85,000 or less.

(2) Except as otherwise provided in this subsection, an independent committee shall not make contributions to a candidate committee of a candidate for elective office that, in the aggregate for that election cycle, are more than 10 times the amount permitted a person other than an independent committee or political party committee in subsection (1). A house political party caucus committee or a senate political party caucus committee is not limited under this subsection in the amount of contributions made to the candidate committee of a candidate for the office of state legislator, except as follows:

(a) A house political party caucus committee or a senate political party caucus committee shall not pay a debt incurred by a candidate if that debt was incurred while the candidate was seeking nomination at a primary election and the candidate was opposed at that primary.

(b) A house political party caucus committee or a senate political party caucus committee shall not make a contribution to or make an expenditure on behalf of a candidate if that candidate is seeking nomination at a primary election and the candidate is opposed at that primary.

(3) A political party committee other than a state central committee shall not make contributions to the candidate committee of a candidate for elective office that are more than 10 times the amount permitted a person other than an independent committee or political party committee in subsection (1).

(4) A state central committee of a political party shall not make contributions to the candidate committee of a candidate for state elective office other than a candidate for the legislature that are more than 20 times the amount permitted a person other than an independent committee or political party committee in subsection (1). A state central committee of a political party shall not make contributions to the candidate committee of a candidate for state senator,

state representative, or local elective office that are more than 10 times the amount permitted a person other than an independent committee or political party committee in subsection (1).

(5) A contribution from a member of a candidate's immediate family to the candidate committee of that candidate is exempt from the limitations of subsection (1).

(6) Consistent with the provisions of this section, a contribution designated in writing for a particular election cycle is considered made for that election cycle. A contribution made after the close of a particular election cycle and designated in writing for that election cycle shall be made only to the extent that the contribution does not exceed the candidate committee's net outstanding debts and obligations from the election cycle so designated. If a contribution is not designated in writing for a particular election cycle, the contribution is considered made for the election cycle that corresponds to the date of the written instrument.

(7) A candidate committee, a candidate, or a treasurer or agent of a candidate committee shall not accept a contribution with respect to an election cycle that exceeds the limitations in subsection (1), (2), (3), or (4).

(8) The contribution limits in subsection (1) for a candidate for local elective office are effective on the effective date of the amendatory act that provides for those contribution limits, however, only contributions received by that candidate on and after that date shall be used to determine if the contribution limit has been reached.

(9) 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 90 days, or both, or, if the person is not an individual, by a fine of not more than \$10,000.00.

(10) For purposes of the limitations provided in subsections (1) and (2), all contributions made by political committees or independent committees established by any corporation, joint stock company, domestic dependent sovereign, or labor organization, including any parent, subsidiary, branch, division, department, or local unit thereof, shall be considered to have been made by a single independent committee. By way of illustration and not limitation, all of the following apply as a result of the application of this requirement:

(a) All of the political committees and independent committees established by a for profit corporation or joint stock company, by a subsidiary of the for profit corporation or joint stock company, or by any combination thereof, are treated as a single independent committee.

(b) All of the political committees and independent committees established by a single national or international labor organization, by a labor organization of that national or international labor organization, by a local labor organization of that national or international labor organization, or by any other subordinate organization of that national or international labor organization, or by any combination thereof, are treated as a single independent committee.

(c) All of the political committees and independent committees established by an organization of national or international unions, by a state central body of that organization, by a local central body of that organization, or by any combination thereof, are treated as a single independent committee.

(d) All of the political committees and independent committees established by a nonprofit corporation, by a related state entity of that nonprofit corporation, by a related local entity of that nonprofit corporation, or by any combination thereof, are treated as a single independent committee.

Sec. 57. (1) A public body or an individual acting for a public body shall not use or authorize the use of funds, personnel, office space, 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). 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) 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.

Sec. 69. (1) Except as provided in subsection (6), a person other than an independent committee or a political party committee shall not make contributions to a candidate committee of a candidate that are more than \$3,400.00 in value for an election cycle.

(2) An independent committee shall not make contributions to a candidate committee that for an election cycle are more than 10 times the amount permitted a person other than an independent committee or political party committee in subsection (1).

(3) A political party committee that is a state central committee shall not make contributions to a candidate committee that for an election cycle are more than \$750,000.00.

(4) A political party committee that is a congressional district or county committee shall not make contributions to a candidate committee that for an election cycle are more than \$30,000.00.

(5) A candidate committee, a candidate, or a treasurer or agent shall not accept a contribution with respect to an election cycle that exceeds a limitation in subsections (1) to (4).

(6) As used in this subsection, "immediate family" means a spouse, parent, brother, sister, son, or daughter. A candidate and members of that candidate's immediate family may not contribute in total to that person's candidate committee an amount that is more than \$50,000.00 in value for an election cycle.

(7) Sections 5(3) and 52(6) apply to determining when an election cycle begins and ends and to which election cycle a particular contribution is attributed.

(8) The candidate committee of a candidate for governor that does not apply for funds from the state campaign fund and that accepts from the candidate and the candidate's immediate family contributions that total for an election cycle more than \$340,000.00 shall notify the secretary of state in writing within 48 hours after receipt of this amount. Within 2 business days after receipt of this notice, the secretary of state shall send notice to all candidates who are either seeking the same nomination, in the case of a primary election, or election to that same office, in the case of a general election, informing those candidate committees of all of the following:

(a) That the expenditure limits provided in section 67 are waived for the remainder of that election for those notified candidate committees that receive funds from the state campaign fund under this act.

(b) That the expenditure limits of section 67 are not waived for the purpose of determining the amount of public funds available to a candidate under section 64 or 65.

(9) 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 90 days, or both, or, if the person is not an individual, by a fine of not more than \$10,000.00.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.