

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4001**

A bill 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.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "legal
2 defense fund act".

3 Sec. 3. As used in this act:

1 (a) "Contribution" means a payment, gift, subscription,
2 assessment, expenditure, contract, payment for services, dues,
3 advance, forbearance, loan, or donation of money or anything of
4 ascertainable monetary value, or a transfer of anything of
5 ascertainable monetary value to a person, made for or allocated to
6 the purpose of defending an elected official in a criminal, civil,
7 or administrative action that arises directly out of the conduct of
8 the elected official's governmental duties. Contribution includes
9 an officer holder's own money or property, other than the officer
10 holder's homestead, used on behalf of the officer holder's defense,
11 the granting of discounts or rebates not available to the general
12 public, and the endorsing or guaranteeing of a loan for the amount
13 the endorser or guarantor is liable. Contribution does not include
14 an offer or tender of a contribution if expressly and
15 unconditionally rejected, returned, or refunded within 30 business
16 days after receipt.

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

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

27 (d) "Financial institution" means a state or nationally

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1 chartered bank or a state or federally chartered savings and loan
2 association, savings bank, or credit union whose deposits are
3 insured by an agency of the United States government and that
4 maintains a principal office or branch office located in this state
5 under the laws of this state or the United States.

6 (e) "Legal defense fund" means all contributions received,
7 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(2) of the internal revenue code of 1986, 26 USC 115.>>

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

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

16 Sec. 5. (1) An elected official who is the beneficiary of a
17 legal defense fund shall file a statement of organization with the
18 secretary of state within 10 days after the earlier of the date the
19 legal defense fund first receives a contribution or first makes an
20 expenditure of a contribution.

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

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

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

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

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

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

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

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

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

1 for deposit into the state bar of Michigan client protection fund.

2 Sec. 7. (1) From the earlier of the date that a legal defense
3 fund receives its first contribution or makes its first expenditure
4 of a contribution until the date the elected official files a
5 statement of dissolution under section 5, the treasurer of a legal
6 defense fund shall file transaction reports according to the
7 schedule in subsection (2). A transaction report shall disclose all
8 of the following information:

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

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

14 (i) The person's full name.

15 (ii) The person's street address.

16 (iii) The amount contributed.

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

18 (v) The cumulative amount contributed by that person.

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

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

26 (i) The amount of the expenditure.

27 (ii) The name and address of the person to whom the expenditure

1 is made.

2 (iii) The purpose of the expenditure.

3 (iv) The date of the expenditure.

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

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

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

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

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

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

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

24 (5) A transaction report required by this section shall
25 include a verification statement, signed by the treasurer for the
26 legal defense fund and the elected official, stating that he or she
27 used all reasonable diligence in preparing the report and that to

1 his or her knowledge the statement is true and complete.

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

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

16 Sec. 9. (1) If a report required by section 7 is filed late,
17 the legal defense fund or the elected official shall pay a late
18 filing fee. If the legal defense fund has received contributions of
19 \$10,000.00 or less during the previous 2 years, the late filing fee
20 shall be \$25.00 for each business day the report remains unfiled,
21 but not to exceed \$500.00. If the legal defense fund has received
22 contributions of more than \$10,000.00 during the previous 2 years,
23 the late filing fee shall be determined as follows, but shall not
24 exceed \$1,000.00:

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

27 (b) An additional \$25.00 for each business day after the first

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1 3 business days the report remains unfiled.

2 (c) An additional \$50.00 for each business day after the first
3 10 business days the report remains unfiled.

4 (2) A treasurer who fails to file 2 transaction reports
5 required by section 7, if both of the reports remain unfiled for
6 more than 30 days, is guilty of a misdemeanor punishable by
7 imprisonment for not more than <<90 93>> days or a fine of not more than
8 \$1,000.00, or both.

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

11 Sec. 11. (1) The secretary of state shall make a statement or
12 report required to be filed under this act available for public
13 inspection and reproduction, commencing as soon as practicable, but
14 not later than the third business day following the day on which it
15 is received, during regular business hours of the filing official.
16 The secretary of state shall also make the report or all of the
17 contents of the report available to the public on the internet,
18 without charge, as soon as practicable, at a single website
19 established and maintained by the secretary of state.

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

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

24 (4) Except as otherwise provided in this subsection, a
25 statement of organization filed under this act with the secretary
26 of state shall be preserved by the secretary of state for 15 years
27 from the official date of the committee's dissolution. Any other

1 statement or report filed under this act with the secretary of
2 state shall be preserved by the secretary of state for 15 years
3 from the date the filing occurred. Upon a determination that a
4 violation of this act has occurred, all complaints, orders,
5 decisions, or other documents related to that violation shall be
6 preserved by the filing official who is not the secretary of state
7 or the secretary of state for 15 years from the date of the court
8 determination or the date the violations are corrected, whichever
9 is later. Statements and reports filed under this act may be
10 reproduced pursuant to the records media act, 1992 PA 116, MCL
11 24.401 to 24.406. After the required preservation period, the
12 statements and reports, or the reproductions of the statements and
13 reports, may be disposed of in the manner prescribed in the
14 management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594, and
15 1913 PA 271, MCL 399.1 to 399.10.

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

20 (6) The secretary of state shall determine whether a statement
21 or report filed under this act complies, on its face, with the
22 requirements of this act. The secretary of state shall determine
23 whether a statement or report that is required to be filed under
24 this act is in fact filed. Within 4 business days after the
25 deadline for filing a statement or report under this act, the
26 secretary of state shall give notice to the filer by registered
27 mail of an error or omission in the statement or report and give

1 notice to a person the secretary of state has reason to believe is
2 a person required to and who failed to file a statement or report.
3 A failure to give notice by the secretary of state under this
4 subsection is not a defense to a criminal action against the person
5 required to file.

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

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

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

27 Sec. 13. (1) An elected official, or a person on behalf of an

1 elected official, shall not solicit or accept a contribution for
2 the purpose of defending the elected official in a criminal, civil,
3 or administrative action that arises directly out of the conduct of
4 the elected official's governmental duties unless the contribution
5 is included in a legal defense fund that complies with the
6 requirements of this act.

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

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

21 (4) Contributions to a legal defense fund that are received as
22 or converted to the form of money, checks, or other negotiable
23 instruments shall be deposited in a single account in a financial
24 institution for all contributions to the legal defense fund. The
25 treasurer of the legal defense fund shall designate the financial
26 institution that is the official depository of the legal defense
27 fund. A contribution that is received and retained by a legal

1 defense fund shall be maintained in a separate account at the
2 official depository and shall not be deposited in or commingled
3 with any other account of the elected official.

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

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

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

10 Sec. 15. (1) Except for expenditures upon dissolution that are
11 made as prescribed in section 5 or as provided for an anonymous
12 contribution under section 13, a person shall make expenditures
13 from a legal defense fund only for administration of the fund,
14 attorney fees, or related legal costs, which shall not include
15 direct or indirect payments for media purchases, media consulting,
16 or mass mailings. An expenditure from a legal defense fund shall be
17 made for the legal defense of only the 1 elected official for whom
18 the fund was established.

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

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

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

25 Sec. 17. This act applies to any contribution made, received,
26 or expended after the effective date of this act and to any
27 contribution received before the effective date of this act that

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1 has not been returned to the contributor within 90 days after the
2 effective date of this act.

3 Sec. 19. The secretary of state may promulgate rules to
4 implement this act and may issue declaratory rulings pursuant to
5 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
6 to 24.328.

<<Enacting section 1. This amendatory act takes effect September 1,
2008.>>

7 Enacting section <<2>>. This act does not take effect unless
8 Senate Bill No. 1263 of the 94th Legislature is enacted into law.