

HOUSE BILL No. 4216

February 15, 2017, Introduced by Reps. Webber, Hornberger and Marino and referred to the Committee on Elections and Ethics.

A bill to amend 1976 PA 388, entitled "Michigan campaign finance act," by amending section 15 (MCL 169.215), as amended by 2015 PA 269.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

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

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

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

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

24 (2) ~~A~~ **THE SECRETARY OF STATE SHALL ONLY ISSUE A** declaratory
25 ruling ~~shall be issued~~ under this section ~~only~~ if the person
26 requesting the ruling has provided a reasonably complete statement
27 of facts necessary for the ruling or if the person requesting the

1 ruling has, with the permission of the secretary of state, supplied
2 supplemental facts necessary for the ruling. A request for a
3 declaratory ruling that is submitted to the secretary of state
4 ~~shall~~**MUST** be made available for public inspection within 48 hours
5 after its receipt. An interested person may submit written comments
6 regarding the request to the secretary of state within 10 business
7 days after the date the request is made available to the public.
8 Within 45 business days after receiving a declaratory ruling
9 request, the secretary of state shall make a proposed response
10 available to the public. An interested person may submit written
11 comments regarding the proposed response to the secretary of state
12 within 5 business days after the date the proposal is made
13 available to the public. Except as otherwise provided in this
14 section, the secretary of state shall issue a declaratory ruling
15 within 60 business days after a request for a declaratory ruling is
16 received. If the secretary of state refuses to issue a declaratory
17 ruling, the secretary of state shall notify the person making the
18 request of the reasons for the refusal and shall issue an
19 interpretative statement providing an informational response to the
20 question presented within the same time limitation applicable to a
21 declaratory ruling. A declaratory ruling or interpretative
22 statement issued under this section ~~shall~~**MUST** not state a general
23 rule of law, other than that which is stated in this act, until the
24 general rule of law is promulgated by the secretary of state as a
25 rule under the administrative procedures act of 1969, 1969 PA 306,
26 MCL 24.201 to 24.328, or under judicial order.

27 (3) Under extenuating circumstances, the secretary of state

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

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

10 (5) A person may file with the secretary of state a complaint
11 that alleges a violation of this act. Within 5 business days after
12 a complaint that meets the requirements of subsection (6) is filed,
13 the secretary of state shall give notice to the person against whom
14 the complaint is filed. The notice ~~shall~~**MUST** include a copy of the
15 complaint. Within 15 business days after this notice is mailed, the
16 person against whom the complaint was filed may submit a response
17 to the secretary of state. The secretary of state may extend the
18 period for submitting a response an additional 15 business days for
19 good cause. The secretary of state shall provide a copy of a
20 response received to the complainant. Within 10 business days after
21 the response is mailed, the complainant may submit a rebuttal
22 statement to the secretary of state. The secretary of state may
23 extend the period for submitting a rebuttal statement an additional
24 10 business days for good cause. The secretary of state shall
25 provide a copy of the rebuttal statement to the person against whom
26 the complaint was filed.

27 (6) A complaint filed under subsection (5) ~~shall~~**MUST** satisfy

1 all of the following requirements:

2 (a) Be signed by the complainant.

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

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

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

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

24 (9) The secretary of state shall investigate the allegations
25 under the rules promulgated under this act. If the violation
26 involves the secretary of state, the immediate family of the
27 secretary of state, or a campaign or committee with which the

1 secretary of state is connected, directly or indirectly, the
2 secretary of state shall refer the matter to the attorney general
3 to determine whether a violation of this act has occurred.

4 (10) No later than 45 business days after receipt of a
5 rebuttal statement submitted under subsection (5), or if no
6 response or rebuttal is received under subsection (5), the
7 secretary of state shall post on the secretary of state's ~~Internet~~
8 **INTERNET** website whether or not there may be reason to believe that
9 a violation of this act has occurred. When the secretary of state
10 determines whether there may be reason to believe that a violation
11 of this act occurred or did not occur or determines to terminate
12 its proceedings, the secretary of state shall, within 30 days of
13 that determination, post on the secretary of state's ~~Internet~~
14 **INTERNET** website any complaint, response, or rebuttal statement
15 received under subsection (5) regarding that violation or alleged
16 violation and any correspondence that is dispositive of that
17 violation or alleged violation between the secretary of state and
18 the complainant or the person against whom the complaint was filed.
19 If the secretary of state determines that there may be reason to
20 believe that a violation of this act occurred, the secretary of
21 state shall endeavor to correct the violation or prevent a further
22 violation by using informal methods such as a conference,
23 conciliation, or persuasion, and may enter into a conciliation
24 agreement with the person involved. Unless violated, a conciliation
25 agreement is a complete bar to any further civil or criminal action
26 with respect to matters covered in the conciliation agreement. The
27 secretary of state shall, within 30 days after a conciliation

1 agreement is signed, post that agreement on the secretary of
2 state's ~~Internet~~**INTERNET** website. If, after 90 business days, the
3 secretary of state is unable to correct or prevent further
4 violation by these informal methods, the secretary of state shall
5 do either of the following:

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

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

10 (11) The secretary of state may commence a hearing to
11 determine whether a civil violation of this act has occurred. The
12 hearing ~~shall~~**MUST** be conducted in accordance with the procedures
13 set forth in chapter 4 of the administrative procedures act of
14 1969, 1969 PA 306, MCL 24.271 to 24.287. If after a hearing the
15 secretary of state determines that a violation of this act has
16 occurred, the secretary of state may issue an order requiring the
17 person to pay a civil fine not more than triple the amount of the
18 improper contribution or expenditure plus not more than \$1,000.00
19 for each violation.

20 (12) A final decision and order issued by the secretary of
21 state is subject to judicial review as provided by chapter 6 of the
22 administrative procedures act of 1969, 1969 PA 306, MCL 24.301 to
23 24.306. The secretary of state shall deposit a civil fine imposed
24 under this section in the general fund. The secretary of state may
25 bring an action in circuit court to recover the amount of a civil
26 fine.

27 (13) When a report or statement is filed under this act, the

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

10 (14) No later than 60 business days after a matter is referred
11 to the attorney general for enforcement of a criminal penalty, the
12 attorney general shall determine whether to proceed with
13 enforcement of that penalty.

14 (15) Unless otherwise specified in this act, a person who
15 violates a provision of this act is subject to a civil fine of not
16 more than ~~\$1,000.00~~ **\$3,000.00** for each violation. A civil fine is
17 in addition to, but not limited by, a criminal penalty prescribed
18 by this act.

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

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

26 (b) Pay to the person against whom the complaint was filed
27 some or all of the expenses, including, but not limited to,

1 reasonable attorney fees incurred by that person in proceedings
2 under this act as a direct result of the filing of the complaint.

3 (17) Except as otherwise provided in section 57, there is no
4 private right of action, either in law or in equity, under this
5 act. Except as otherwise provided in section 57, the remedies
6 provided in this act are the exclusive means by which this act may
7 be enforced and by which any harm resulting from a violation of
8 this act may be redressed. The criminal penalties provided by this
9 act may only be enforced by the attorney general and only upon
10 referral by the secretary of state as provided under subsection
11 (10) or (13).

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

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

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

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

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

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