

# SENATE BILL No. 1252

November 29, 2018, Introduced by Senator ROBERTSON and referred to the Committee on Elections and Government Reform.

A bill to amend 2008 PA 288, entitled  
"Legal defense fund act,"  
by amending the title and sections 3, 5, 7, 11, and 19 (MCL 15.523,  
15.525, 15.527, 15.531, and 15.539), section 11 as amended by 2017  
PA 183.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

### TITLE

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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

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1 prescribe certain powers and duties of the ~~secretary of state~~ **FAIR**  
2 **POLITICAL PRACTICES COMMISSION** as to legal defense funds; and to  
3 prescribe criminal penalties and civil sanctions.

4 Sec. 3. As used in this act:

5 (A) **"COMMISSION" MEANS THE FAIR POLITICAL PRACTICES COMMISSION**  
6 **CREATED IN SECTION 15A OF THE MICHIGAN CAMPAIGN FINANCE ACT, 1976**  
7 **PA 388, MCL 169.215A.**

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

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

26 (D) ~~(c)~~ "Elective office" means a public office filled by an  
27 election. ~~A person~~ **AN INDIVIDUAL** who is appointed to fill a vacancy

1 in a public office that is ordinarily elective holds an elective  
2 office. Elective office does not include the office of precinct  
3 delegate. Elective office does not include a school board member in  
4 a school district that has a pupil membership of 2,400 or less  
5 enrolled on the most recent pupil membership count day. Elective  
6 office does not include a federal office.

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

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

22 (G) ~~(f)~~ "Person" means a business, individual, proprietorship,  
23 firm, partnership, joint venture, syndicate, business trust, labor  
24 organization, company, corporation, association, committee, or any  
25 other organization or group of persons acting jointly.

26 (H) ~~(g)~~ "Treasurer" means the individual designated as  
27 responsible for a legal defense fund's record keeping, report

1 preparation, or report filing or, in the absence of such an  
2 individual, the elected official who is the beneficiary of the  
3 legal defense fund.

4 Sec. 5. (1) An elected official who is the beneficiary of a  
5 legal defense fund shall file a statement of organization with the  
6 ~~secretary of state~~ **COMMISSION** within 10 days after the earlier of  
7 the date the legal defense fund first receives a contribution or  
8 first makes an expenditure of a contribution.

9 (2) A statement of organization required by this section ~~shall~~  
10 **MUST** include all of the following information:

11 (a) The name, street address, and telephone number of the  
12 legal defense fund. The name of the legal defense fund ~~shall~~ **MUST**  
13 include the first and last names of the elected official who is the  
14 beneficiary of the legal defense fund and the words "legal defense  
15 fund".

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

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

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

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

26 (3) If any of the information required in a statement of  
27 organization under this section changes, the legal defense fund

1 shall file an amended statement of organization when the next  
2 transaction report under section 7 is required to be filed.

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

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

19 Sec. 7. (1) From the earlier of the date that a legal defense  
20 fund receives its first contribution or makes its first expenditure  
21 of a contribution until the date the elected official files a  
22 statement of dissolution under section 5, the treasurer of a legal  
23 defense fund shall file transaction reports according to the  
24 schedule in subsection (2). A transaction report ~~shall~~**MUST**  
25 disclose all of the following information:

26 (a) The legal defense fund's name, address, and telephone  
27 number and the full name, residential and business addresses, and

1 telephone numbers of the legal defense fund's treasurer.

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

4 (i) The person's full name.

5 (ii) The person's street address.

6 (iii) The amount contributed.

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

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

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

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

16 (i) The amount of the expenditure.

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

19 (iii) The purpose of the expenditure.

20 (iv) The date of the expenditure.

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

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

1 (b) April 25, with a closing date of March 31 **OF THAT YEAR.**

2 (c) July 25, with a closing date of June 30 **OF THAT YEAR.**

3 (d) October 25, with a closing date of September 30 **OF THAT**  
4 **YEAR.**

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

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

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

20 (6) A treasurer or other individual designated on the  
21 statement of organization as responsible for the legal defense  
22 fund's record keeping, report preparation, or report filing shall  
23 keep detailed accounts, records, bills, and receipts as required to  
24 substantiate the information contained in a statement or report  
25 required under this act. The records of a legal defense fund ~~shall~~  
26 **MUST** be preserved for 5 years and ~~shall be~~ made available for  
27 inspection as authorized by the ~~secretary of state.~~ **COMMISSION.** A

1 treasurer who knowingly violates this subsection is subject to a  
2 civil fine of not more than \$1,000.00.

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

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

17 (2) A copy of a statement or part of a statement ~~shall~~ **MUST** be  
18 provided by the ~~secretary of state~~ **COMMISSION** at a reasonable  
19 charge.

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

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



1 preserved by the ~~secretary of state~~ **COMMISSION** for 15 years from  
2 the date the filing occurred. Upon a determination that a violation  
3 of this act has occurred, all complaints, orders, decisions, or  
4 other documents related to that violation ~~shall~~ **MUST** be preserved  
5 by the filing official who is not the ~~secretary of state~~ **COMMISSION**  
6 or the ~~secretary of state~~ **COMMISSION** for 15 years from the date of  
7 the court determination or the date the violation is corrected,  
8 whichever is later. Statements and reports filed under this act may  
9 be reproduced pursuant to the records reproduction act, 1992 PA  
10 116, MCL 24.401 to 24.406. After the required preservation period,  
11 the statements and reports, or the reproductions of the statements  
12 and reports, may be disposed of in the manner prescribed in the  
13 management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594, and  
14 section 11 of the Michigan history center act, 2016 PA 470, MCL  
15 399.811.

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

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

1 statement or report and give notice to a person the ~~secretary of~~  
2 ~~state~~**COMMISSION** has reason to believe is a person required to and  
3 who failed to file a statement or report. A failure to give notice  
4 by the ~~secretary of state~~**COMMISSION** under this subsection is not a  
5 defense to a criminal action against the person 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~~**COMMISSION**.  
9 If the report or statement was not filed, then the report or  
10 statement ~~shall~~**MUST** be late filed within 9 business days after the  
11 time it was required to be filed and ~~shall be~~**IS** subject to late  
12 filing fees.

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

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

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

5       Enacting section 1. This amendatory act does not take effect  
6 unless Senate Bill No.\_1250  
7       of the 99th Legislature is enacted into law.