

MICHIGAN CAMPAIGN FINANCE ACT (EXCERPT)
Act 388 of 1976

169.215 Duties of secretary of state; declaratory ruling and interpretive statement; filing, contents, and form of complaint; investigations; referral of matter to attorney general; posting of complaint, response, or rebuttal statement on website; informal methods of conference, conciliation, or persuasion; conciliation agreement as bar to further action; enforcement of criminal penalty; hearing; order; judicial review; civil fine and other sanctions; waiver of campaign statement filing; duties of county clerk.

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 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 in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(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 person requesting the ruling has, with the permission of the secretary of state, supplied 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 and shall issue an interpretative statement providing an informational response to the question presented within the same time limitation applicable to a declaratory ruling. 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 under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, or under 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 with the secretary of state a complaint that alleges a violation of this act. Within 5 business days after a complaint that meets the requirements of subsection (6) is filed, the secretary of state shall give notice to the person against whom the complaint is filed. The notice shall include a copy of the complaint. Within 15 business days after this notice is mailed, the person against whom the complaint was filed may submit a response to the secretary of state. The secretary of state may extend the period for

submitting a response an additional 15 business days for good cause. The secretary of state shall provide a copy of a response received to the complainant. Within 10 business days after the response is mailed, the complainant may submit a rebuttal statement to the secretary of state. The secretary of state may extend the period for submitting a rebuttal statement an additional 10 business days for good cause. The secretary of state shall provide a copy of the rebuttal statement to the person against whom the complaint was filed.

(6) A complaint filed under subsection (5) shall satisfy all of the following requirements:

(a) Be signed by the complainant.

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

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

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

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

(9) The secretary of state shall investigate the allegations under the rules promulgated under this act. If the violation involves the secretary of state, the immediate family of the secretary of state, or a campaign or committee with which the secretary of state is connected, directly or indirectly, the secretary of state shall refer the matter to the attorney general to determine whether a violation of this act has occurred.

(10) No later than 45 business days after receipt of a rebuttal statement submitted under subsection (5), or if no response or rebuttal is received under subsection (5), the secretary of state shall post on the secretary of state's Internet website whether or not there may be reason to believe that a violation of this act has occurred. When the secretary of state determines whether there may be reason to believe that a violation of this act occurred or did not occur or determines to terminate its proceedings, the secretary of state shall, within 30 days of that determination, post on the secretary of state's Internet website any complaint, response, or rebuttal statement received under subsection (5) regarding that violation or alleged violation and any correspondence that is dispositive of that violation or alleged violation between the secretary of state and the complainant or the person against whom the complaint was filed. If the secretary of state determines that there may be reason to believe that a violation of this act 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 civil or criminal action with respect to matters covered in the conciliation agreement. The secretary of state shall, within 30 days after a conciliation agreement is signed, post that agreement on the secretary of state's Internet website. If, after 90 business days, the secretary of state is unable to correct or prevent further violation by these informal methods, the secretary of state shall do either of the following:

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

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

(11) The secretary of state may commence a hearing to determine whether a civil violation of this act has occurred. The hearing shall be conducted in accordance with the procedures set forth in chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. 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 not more than triple the amount of the improper contribution or expenditure plus not more than \$1,000.00 for each violation.

(12) 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, 1969 PA 306, MCL 24.301 to 24.306. 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.

(13) When a report or statement is filed under this act, the secretary of state shall review the report or statement and may investigate an apparent violation of this act under the rules promulgated under 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 (10) have been complied with, the secretary of state may refer the

matter to the attorney general for the enforcement of a criminal penalty provided by this act, or commence a hearing under subsection (11) to determine whether a civil violation of this act has occurred.

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

(15) 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. A civil fine is in addition to, but not limited by, a criminal penalty prescribed by this act.

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

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

(b) Pay to the person against whom the complaint was filed some or all of the expenses, including, but not limited to, reasonable attorney fees incurred by that person in proceedings under this act as a direct result of the filing of the complaint.

(17) Except as otherwise provided in section 57, there is no private right of action, either in law or in equity, under this act. Except as otherwise provided in section 57, 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. The criminal penalties provided by this act may only be enforced by the attorney general and only upon referral by the secretary of state as provided under subsection (10) or (13).

(18) 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.

(19) 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).

History: 1976, Act 388, Imd. Eff. Dec. 30, 1976;—Am. 1980, Act 465, Imd. Eff. Jan. 17, 1981;—Am. 1989, Act 95, Imd. Eff. June 21, 1989;—Am. 1996, Act 590, Eff. Mar. 31, 1997;—Am. 1999, Act 238, Imd. Eff. Dec. 28, 1999;—Am. 2000, Act 201, Eff. Mar. 28, 2001;—Am. 2001, Act 250, Eff. Mar. 22, 2002;—Am. 2012, Act 31, Imd. Eff. Feb. 28, 2012;—Am. 2012, Act 277, Imd. Eff. July 3, 2012;—Am. 2015, Act 269, Imd. Eff. Jan. 6, 2016.

Compiler's note: Enacting section 1 of Act 31 of 2012 provides:

"Enacting section 1. It is the policy of this state that a public body shall maintain strict neutrality in each election and that a public body or a person acting on behalf of a public body shall not attempt to influence the outcome of an election held in the state. If there is a perceived ambiguity in the interpretation of section 57, that section shall be construed to best effectuate the policy of strict neutrality by a public body in an election."

Administrative rules: R 169.1 et seq. of the Michigan Administrative Code.