

HOUSE BILL No. 4713

March 26, 2009, Introduced by Reps. Durhal, Cushingberry, Young, Lipton, Jackson, Geiss, Donigan, Stanley, Miller, Womack, Warren, Lemmons, Haugh, Liss, Dean, Tlaib and Meadows and referred to the Committee on Ethics and Elections.

A bill to amend 1976 PA 388, entitled
"Michigan campaign finance act,"
by amending section 15 (MCL 169.215), as amended by 2001 PA 250.

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 the
8 purposes of this act, and supervise the implementation of the
9 filing systems by the clerks of the counties.

10 (c) Receive all statements and reports required by this act to

1 be filed with the secretary of state.

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

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

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

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

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

25 (2) A declaratory ruling shall be issued under this section
26 only if the person requesting the ruling has provided a reasonably
27 complete statement of facts necessary for the ruling or if the

1 person requesting the ruling has, with the permission of the
2 secretary of state, supplied supplemental facts necessary for the
3 ruling. A request for a declaratory ruling that is submitted to the
4 secretary of state shall be made available for public inspection
5 within 48 hours after its receipt. An interested person may submit
6 written comments regarding the request to the secretary of state
7 within 10 business days after the date the request is made
8 available to the public. Within 45 business days after receiving a
9 declaratory ruling request, the secretary of state shall make a
10 proposed response available to the public. An interested person may
11 submit written comments regarding the proposed response to the
12 secretary of state within 5 business days after the date the
13 proposal is made available to the public. Except as otherwise
14 provided in this section, the secretary of state shall issue a
15 declaratory ruling within 60 business days after a request for a
16 declaratory ruling is received. If the secretary of state refuses
17 to issue a declaratory ruling, the secretary of state shall notify
18 the person making the request of the reasons for the refusal and
19 shall issue an interpretative statement providing an informational
20 response to the question presented within the same time limitation
21 applicable to a declaratory ruling. A declaratory ruling or
22 interpretative statement issued under this section shall not state
23 a general rule of law, other than that which is stated in this act,
24 until the general rule of law is promulgated by the secretary of
25 state as a rule under the administrative procedures act of 1969,
26 1969 PA 306, 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 include a copy of the
15 complaint. Within 15 business days after this notice is provided,
16 the person against whom the complaint was filed may submit to the
17 secretary of state a response. The secretary of state may extend
18 the period for submitting a response an additional 15 business days
19 for good cause. The secretary of state shall provide a copy of a
20 response received to the complainant. Within 10 business days after
21 receiving a copy of the response, the complainant may submit to the
22 secretary of state a rebuttal statement. 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 under subsection (5) shall satisfy all of the

1 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. Every 60 days after a
26 complaint that meets the requirements of subsection (6) is filed
27 and until the matter is terminated, the secretary of state shall

1 mail to the complainant and to the alleged violator notice of the
2 action taken to date by the secretary of state, together with the
3 reasons for the action or nonaction.

4 (10) If the secretary of state determines that there may be
5 reason to believe that a violation of this act has occurred, the
6 secretary of state shall endeavor to correct the violation or
7 prevent a further violation by using informal methods such as a
8 conference, conciliation, or persuasion, and may enter into a
9 conciliation agreement with the person involved. Unless violated, a
10 conciliation agreement is a complete bar to any further action with
11 respect to matters covered in the conciliation agreement. If the
12 secretary of state is unable to correct or prevent further
13 violation by these informal methods, the secretary of state may
14 refer the matter to the attorney general for the enforcement of a
15 criminal penalty provided by this act or commence a hearing as
16 provided in subsection (11).

17 (11) The secretary of state may commence a hearing to
18 determine whether a civil violation of this act has occurred. A
19 hearing shall not be commenced during the period beginning 30 days
20 before an election in which the committee has received or expended
21 money and ending the day after that election except with the
22 consent of the person suspected of committing a civil violation.
23 The hearing shall be conducted in accordance with the procedures
24 set forth in chapter 4 of the administrative procedures act of
25 1969, 1969 PA 306, MCL 24.271 to 24.287. If after a hearing the
26 secretary of state determines that a violation of this act has
27 occurred, the secretary of state may issue an order requiring the

1 person to pay a civil fine equal to the amount of the improper
2 contribution or expenditure plus not more than \$1,000.00 for each
3 violation.

4 (12) A final decision and order issued by the secretary of
5 state is subject to judicial review as provided by chapter 6 of the
6 administrative procedures act of 1969, 1969 PA 306, MCL 24.301 to
7 24.306. The secretary of state shall deposit a civil fine imposed
8 under this section in the general fund. The secretary of state may
9 bring an action in circuit court to recover the amount of a civil
10 fine.

11 (13) When a report or statement is filed under this act, the
12 secretary of state shall review the report or statement and may
13 investigate an apparent violation of this act under the rules
14 promulgated under this act. If the secretary of state determines
15 that there may be reason to believe a violation of this act has
16 occurred and the procedures prescribed in subsection (10) have been
17 complied with, the secretary of state may refer the matter to the
18 attorney general for the enforcement of a criminal penalty provided
19 by this act, or commence a hearing under subsection (11) to
20 determine whether a civil violation of this act has occurred.

21 (14) Unless otherwise specified in this act, a person who
22 violates a provision of this act is subject to a civil fine of not
23 more than \$1,000.00 for each violation. A civil fine is in addition
24 to, but not limited by, a criminal penalty prescribed by this act.

25 (15) In addition to any other sanction provided for by this
26 act, the secretary of state may require a person who files a
27 complaint with a false certificate under subsection (6)(c) to do

1 either or both of the following:

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

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

9 (16) There is no private right of action, either in law or in
10 equity, under this act. The remedies provided in this act are the
11 exclusive means by which this act may be enforced and by which any
12 harm resulting from a violation of this act may be redressed.

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

20 **(18) THE SECRETARY OF STATE IS AUTHORIZED TO ALLOW THE PAYMENT**
21 **OF ANY FINE OR FEE IMPOSED UNDER THIS ACT BY INSTALLMENT FOR A**
22 **PERIOD NOT TO EXCEED 12 MONTHS.**

23 (19) ~~(18)~~The clerk of each county shall do all of the
24 following:

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

27 (b) Under the supervision of the secretary of state, implement

1 the filing, coding, and cross-indexing system prescribed for the
2 filing of reports and statements required to be filed with the
3 county clerk's office.

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

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