

Act No. 238
Public Acts of 1999
Approved by the Governor
December 28, 1999
Filed with the Secretary of State
December 28, 1999
EFFECTIVE DATE: December 28, 1999

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 1999**

Introduced by Rep. Woronchak

ENROLLED HOUSE BILL No. 5057

AN ACT to amend 1976 PA 388, entitled "An act to regulate political activity; to regulate campaign financing; to restrict campaign contributions and expenditures; to require campaign statements and reports; to regulate anonymous contributions; to regulate campaign advertising and literature; to provide for segregated funds for political purposes; to provide for the use of public funds for political purposes; to create certain funds; to provide for reversion, retention, or refunding of unexpended balances in certain funds; to require other statements and reports; to regulate acceptance of certain gifts, payments, and reimbursements; to prescribe the powers and duties of certain state departments and state and local officials and employees; to provide appropriations; to prescribe penalties and provide remedies; and to repeal certain acts and parts of acts," by amending sections 15, 33, 34, and 35 (MCL 169.215, 169.233, 169.234, and 169.235), section 15 as amended by 1996 PA 590, section 33 as amended by 1995 PA 264, and sections 34 and 35 as amended by 1989 PA 95, and by adding section 18.

The People of the State of Michigan enact:

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 the purposes of 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 pursuant to 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 secretary of state has permitted the person requesting the ruling an opportunity to supply 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. The secretary of state may issue an interpretative statement providing an informational response to the question presented. 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 pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, or pursuant to 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 a complaint with the secretary of state alleging a violation of this act. Within 5 business days after a complaint 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 provided, the person against whom the complaint was filed may submit to the secretary of state a response. 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 receiving a copy of the response, the complainant may submit to the secretary of state a rebuttal statement. 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. The secretary of state shall investigate the allegations pursuant to the rules promulgated under this act. Every 60 days after a complaint is filed and until the matter is terminated, the secretary of state shall mail to the complainant and to the alleged violator notice of the action taken to date by the secretary of state, together with the reasons for the action or nonaction. If the secretary of state determines that there may be reason to believe that a violation of this act has 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 action with respect to matters covered in the conciliation agreement. If the secretary of state is unable to correct or prevent further violation by these informal methods, the secretary of state may refer the matter to the attorney general for the enforcement of any criminal penalty provided by this act or commence a hearing pursuant to subsection (6).

(6) The secretary of state may commence a hearing to determine whether a civil violation of this act has occurred. A hearing shall not be commenced during the period beginning 30 days before an election in which the committee has received or expended money and ending the day after that election except with the consent of the person suspected of committing a civil violation. 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 equal to the amount of the improper contribution or expenditure plus not more than \$1,000.00 for each violation. 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.

(7) When a report or statement is filed pursuant to this act, the secretary of state shall review the report or statement and may investigate an apparent violation of this act pursuant to 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 (5) have been complied with, the secretary of state may refer the matter to the attorney general for the enforcement of any criminal penalty provided by this act, or commence a hearing under subsection (6) to determine whether a civil violation of this act has occurred.

(8) 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. Civil fines are in addition to, but not limited by, any criminal penalty prescribed by this act.

(9) There is no private right of action, either in law or in equity, pursuant to this act. 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.

(10) 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.

(11) 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).

Sec. 18. (1) The secretary of state shall develop and implement an electronic filing and internet disclosure system that permits committees that are required to file statements or reports under this act with the secretary of state to file those statements or reports electronically and that provides internet disclosure of electronically filed statements or reports on a website.

(2) By July 1, 2000, the secretary of state shall offer each committee required to file with the secretary of state the option of filing campaign statements or reports electronically, as described in subsection (1).

(3) The electronic filing advisory board is created within the department of state. The board shall consist of the following members:

(a) One member of the senate appointed by the senate majority leader.

(b) One member of the senate appointed by the senate minority leader.

(c) One member of the house of representatives appointed by the speaker of the house.

(d) One member of the house of representatives appointed by the house minority leader.

(e) The secretary of state or his or her designee.

(4) The members first appointed to the board shall be appointed within 60 days after the effective date of this section. Members of the board shall serve for the life of the board.

(5) If a member of the board appointed under subsection (3)(a), (b), (c), or (d) vacates his or her office as a member of the board, a successor shall be appointed in the same manner as the vacating member was appointed.

(6) A member of the board appointed under subsection (3)(a), (b), (c), or (d) may be removed from office as a member of the board by the officer who appointed him or her, for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(7) The first meeting of the board shall be called by the secretary of state. At the first meeting, the board shall elect from among its members a chairperson and other officers as it considers necessary or appropriate. After the first meeting, the board shall meet at least quarterly, or more frequently at the call of the chairperson or if requested by 2 or more members.

(8) A majority of the members of the board constitute a quorum for the transaction of business at a meeting of the board. A majority of the members present and serving are required for official action of the board.

(9) The business that the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(10) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(11) Members of the board shall serve without compensation. However, members of the board may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the board.

(12) The department of state shall provide staff for the board.

(13) The board shall do all of the following:

(a) Monitor the voluntary electronic filing of campaign statements under subsection (2) in the 2000 and 2002 election cycle by candidate committees that received or expended more than \$20,000.00 in the preceding election cycle.

(b) Monitor the internet disclosure of electronically filed campaign statements described in subdivision (a).

(c) By February 1, 2003, prepare and submit to members of the legislature a report on the effectiveness and ease of use of the electronic filing and internet disclosure system.

(14) The board is dissolved 60 days after issuing the report under subsection (13).

(15) Beginning with the annual campaign statement due January 31, 2004, each committee required to file with the secretary of state that received or expended \$20,000.00 or more in the preceding calendar year or expects to receive or expend \$20,000.00 or more in the current calendar year shall electronically file all statements and reports required under this act, as described in subsection (1).

(16) If a committee was not required to file a campaign statement under subsection (15) only because it did not meet the applicable threshold of receiving or expending \$20,000.00 or more, but the committee later reaches that threshold, the committee shall notify the secretary of state within 10 business days after reaching that threshold and shall subsequently file electronically all statements and reports required under this act.

(17) The secretary of state shall permit a committee to electronically file statements and reports required under this act, as described in subsection (1), except an original statement of organization, after the committee treasurer and, for a candidate committee, the candidate has signed and filed a form designed by the secretary of state to serve as the signature verifying the accuracy and completeness of each statement or report filed electronically.

Sec. 33. (1) A committee, other than an independent committee or a political committee required to file with the secretary of state, supporting or opposing a candidate shall file complete campaign statements as required by this act and the rules promulgated under this act. The campaign statements shall be filed according to the following schedule:

(a) A preelection campaign statement shall be filed not later than the eleventh day before an election. The closing date for a campaign statement filed under this subdivision shall be the sixteenth day before the election.

(b) A postelection campaign statement shall be filed not later than the thirtieth day following the election. The closing date for a campaign statement filed under this subdivision shall be the twentieth day following the election. A committee supporting a candidate who loses the primary election shall file closing campaign statements in accordance with this section. If all liabilities of such a candidate or committee are paid before the closing date and additional contributions are not expected, the campaign statement may be filed at any time after the election, but not later than the thirtieth day following the election.

(2) For the purposes of subsection (1):

(a) A candidate committee shall file a preelection campaign statement and a postelection campaign statement for each election in which the candidate seeks nomination or election, except if an individual becomes a candidate after the closing date for the preelection campaign statement only the postelection campaign statement is required for that election.

(b) A committee other than a candidate committee shall file a campaign statement for each period during which expenditures are made for the purpose of influencing the nomination or election of a candidate or for the qualification, passage, or defeat of a ballot question.

(3) An independent committee or a political committee other than a house political party caucus committee or senate political party caucus committee required to file with the secretary of state shall file campaign statements as required by this act according to the following schedule:

(a) In an odd numbered year:

(i) Not later than January 31 of that year with a closing date of December 31 of the previous year.

(ii) Not later than July 25 with a closing date of July 20.

(iii) Not later than October 25 with a closing date of October 20.

(b) In an even numbered year:

(i) Not later than April 25 of that year with a closing date of April 20 of that year.

(ii) Not later than July 25 with a closing date of July 20.

(iii) Not later than October 25 with a closing date of October 20.

(4) A house political party caucus committee or a senate political party caucus committee required to file with the secretary of state shall file campaign statements as required by this act according to the following schedule:

(a) Not later than January 31 of each year with a closing date of December 31 of the immediately preceding year.

(b) Not later than April 25 of each year with a closing date of April 20 of that year.

(c) Not later than July 25 of each year with a closing date of July 20 of that year.

(d) Not later than October 25 of each year with a closing date of October 20 of that year.

(e) For the period beginning on the fourteenth day immediately preceding a primary or special primary election and ending on the day immediately following the primary or special primary election, not later than 4 p.m. each business day with a closing date of the immediately preceding day, only for a contribution received or expenditure made that exceeds \$1,000.00 per day.

(f) For the period beginning on the fourteenth day immediately preceding a general or special election and ending on the day immediately following the general or special election, not later than 4 p.m. each business day with a closing date of the immediately preceding day, only for a contribution received or expenditure made that exceeds \$1,000.00 per day.

(5) Notwithstanding subsection (3) or (4) or section 51, if an independent expenditure is made within 45 days before a special election by an independent committee or a political committee required to file a campaign statement with the secretary of state, a report of the expenditure shall be filed by the committee with the secretary of state within 48 hours after the expenditure. The report shall be made on a form provided by the secretary of state and shall include the date of the independent expenditure, the amount of the expenditure, a brief description of the nature of the expenditure, and the name and address of the person to whom the expenditure was paid. The brief description of the expenditure shall include either the name of the candidate and the office sought by the candidate or the name of the ballot question and shall state whether the expenditure supports or opposes the candidate or ballot question. This subsection does not apply if the committee is required to report the independent expenditure in a campaign statement that is required to be filed before the date of the election for which the expenditure was made.

(6) A candidate committee or a committee other than a candidate committee that files a written statement under section 24(5) or (6) need not file a campaign statement under subsection (1), (3), or (4) unless it received or expended an amount in excess of \$1,000.00. If the committee receives or expends an amount in excess of \$1,000.00 during a period covered by a filing, the committee is then subject to the campaign filing requirements under this act.

(7) A committee, candidate, treasurer, or other individual designated as responsible for the committee's record keeping, report preparation, or report filing who fails to file a statement as required by this section shall pay a late filing fee. If the committee has raised \$10,000.00 or less during the previous 2 years, the late filing fee shall be \$25.00 for each business day the statement remains unfiled, but not to exceed \$500.00. If the committee has raised more than \$10,000.00 during the previous 2 years, the late filing fee shall not exceed \$1,000.00, determined as follows:

- (a) Twenty-five dollars for each business day the report remains unfiled.
- (b) An additional \$25.00 for each business day after the first 3 business days the report remains unfiled.
- (c) An additional \$50.00 for each business day after the first 10 business days the report remains unfiled.

(8) If a candidate, treasurer, or other individual designated as responsible for the committee's record keeping, report preparation, or report filing fails to file 2 statements required by this section or section 35 and both of the statements remain unfiled for more than 30 days, that candidate, treasurer, or other designated individual is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 90 days, or both.

(9) If a candidate is found guilty of a violation of this section, the circuit court for that county, on application by the attorney general or the prosecuting attorney of that county, may prohibit that candidate from assuming the duties of a public office or from receiving compensation from public funds, or both.

(10) If a treasurer or other individual designated as responsible for a committee's record keeping, report preparation, or report filing knowingly files an incomplete or inaccurate statement or report required by this section, that treasurer or other designated individual is subject to a civil fine of not more than \$1,000.00.

Sec. 34. (1) A ballot question committee shall file a campaign statement as required by this act according to the following schedule:

(a) A preelection campaign statement, the closing date of which shall be the sixteenth day before the election, shall not be filed later than the eleventh day before the election.

(b) A postelection campaign statement, the closing date of which shall be the twentieth day following the election, shall not be filed later than the thirtieth day following an election. If all liabilities of the committee are paid before the closing date and additional contributions are not expected, the campaign statement may be filed at any time after the election, but not later than the thirtieth day following the election.

(2) A ballot question committee supporting or opposing a statewide ballot question shall file a campaign statement, of which the closing date shall be the twenty-eighth day after the qualification of the measure, not later than 35 days after the ballot question is qualified for the ballot. If the ballot question fails to qualify for the ballot, the ballot question committee shall file the campaign statement within 35 days after the final deadline for qualifying, the closing date of which shall be the twenty-eighth day after the deadline.

(3) If a ballot question committee supporting or opposing a statewide ballot question fails to file a preelection statement under this section, that committee or its treasurer shall pay a late filing fee for each business day the statement remains not filed in violation of this section, not to exceed \$1,000.00, pursuant to the following schedule:

(a) First day—\$25.00.

(b) Second day—\$50.00.

(c) Third day—\$75.00.

(d) Fourth day and for each subsequent day that the statement remains unfiled—\$100.00.

(4) If a treasurer or other individual designated as responsible for the record keeping, report preparation, or report filing of a ballot question committee supporting or opposing a statewide ballot question fails to file a statement, other than a preelection statement, under this section, that committee, treasurer, or other designated individual shall pay a late filing fee. If the committee has raised \$10,000.00 or less during the previous 2 years, the late filing fee shall be \$25.00 for each business day the campaign statement remains unfiled, but not to exceed \$1,000.00. If the committee has raised more than \$10,000.00 during the previous 2 years, the late filing fee shall be \$50.00 for each business day the campaign statement remains unfiled, but not to exceed \$2,000.00.

(5) If a treasurer or other individual designated as responsible for the record keeping, report preparation, or report filing of a ballot question committee supporting or opposing other than a statewide ballot question fails to file a statement under this section, that committee, treasurer, or other designated individual shall pay a late filing fee. If the committee has raised \$10,000.00 or less during the previous 2 years, the late filing fee shall be \$25.00 for each business day the campaign statement remains unfiled, but not to exceed \$1,000.00. If the committee has raised more than \$10,000.00 during the previous 2 years, the late filing fee shall be \$50.00 for each business day the campaign statement remains unfiled, but not to exceed \$2,000.00.

(6) If a treasurer or other individual designated as responsible for the record keeping, report preparation, or report filing of a ballot question committee fails to file a statement as required by subsection (1) or (2) for more than 7 days, that treasurer or other designated individual is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 90 days, or both.

(7) If a treasurer or other individual designated as responsible for the record keeping, report preparation, or report filing of a ballot question committee knowingly files an incomplete or inaccurate statement or report required by this section, that treasurer or other designated individual is subject to a civil fine of not more than \$1,000.00.

Sec. 35. (1) In addition to any other requirements of this act for filing a campaign statement, a committee, other than an independent committee or a political committee required to file with the secretary of state, shall also file a campaign statement not later than January 31 of each year. The campaign statement shall have a closing date of December 31 of the previous year. The period covered by the campaign statement filed pursuant to this subsection shall begin the day after the closing date of the previous campaign statement. A campaign statement filed pursuant to this subsection shall be waived if a postelection campaign statement has been filed which has a filing deadline within 30 days of the closing date of the campaign statement required by this subsection.

(2) Subsection (1) does not apply to a candidate committee for an officeholder who is a judge or a supreme court justice, or who holds an elective office for which the salary is less than \$100.00 a month and who does not receive any contribution or make any expenditure during the time which would be otherwise covered in the statement.

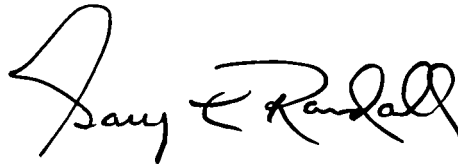
(3) A committee, candidate, treasurer, or other individual designated as responsible for the record keeping, report preparation, or report filing for a candidate committee of a candidate for state elective office or a judicial office who fails to file a campaign statement under this section shall pay a late filing fee. If the committee has raised \$10,000.00 or less during the previous 2 years, the late filing fee shall be \$25.00 for each business day the campaign statement remains unfiled, but not to exceed \$500.00. If the committee has raised more than \$10,000.00 during the previous 2 years, the late filing fee shall be \$50.00 for each business day the campaign statement remains unfiled, but not to exceed \$1,000.00. A committee, treasurer, or other individual designated as responsible for the record keeping, report preparation, or report filing for a committee other than a candidate committee of a candidate for state elective office or a judicial office who fails to file a campaign statement under this section shall pay a late filing fee of \$25.00 for each business day the committee statement remains not filed in violation of this section. The late filing fee shall not exceed \$500.00.

(4) A committee filing a written statement pursuant to section 24(5) or (6) need not file a statement in accordance with subsection (1). If a committee receives or expends more than \$1,000.00 during a time period prescribed by section 24(5) or (6), the committee is then subject to the campaign filing requirements under this act and shall file a campaign statement for the period beginning the day after the closing date of the last postelection campaign statement or an annual campaign statement which is waived pursuant to subsection (1), whichever occurred earlier.

(5) If a candidate, treasurer, or other individual designated as responsible for the record keeping, report preparation, or report filing fails to file 2 statements required by this section or section 33 and both of the statements remain unfiled for more than 30 days, that candidate, treasurer, or other designated individual is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 90 days, or both.

(6) If a treasurer or other individual designated as responsible for the record keeping, report preparation, or report filing for a committee required to file a campaign statement under subsection (1) knowingly files an incomplete or inaccurate statement or report required by this section, that treasurer or other designated individual is subject to a civil fine of not more than \$1,000.00.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved

Governor.