



STATE OF MICHIGAN
RUTH JOHNSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

MEMORANDUM

DATE: February 22, 2016
TO: Committees registered under the MCFA and County Clerks
FROM: Michigan Department of State, Bureau of Elections
SUBJECT: **Legislative Changes to the Michigan Campaign Finance Act (MCFA)**

P.A. 269 of 2015 (Senate Bill 571) recently signed into law, with immediate effect, by the Governor made significant changes to the Michigan Campaign Finance Act (MCFA). Please read this memo carefully to be fully informed of the changes.

The changes to the MCFA in this new public act affect committee filings and other disclosure requirements this year. The changes impact all committee types; Candidate Committees, Political and Independent Committees (PACs), Ballot Question Committees and Political Party Committees on both the state and local level.

The Bureau of Elections is updating the Department's web site and is working to implement the changes as provided in P.A. 269 for 2016 in the MERTS software and paper forms. Committees will receive additional information for complying with the new public act in the coming weeks.

Covered in this memorandum:

- **Filing Schedule Changes for State PACs, Local PACs, Political Party Committees and All Local Committees**
- **~~New Restrictions for Public Bodies Disseminating Communications that Reference a Ballot Question within 60 Days of the Election~~ (Enjoined from Enforcement)**
- **Commingling Exception Added**
- **Operational Changes for Separate Segregated Funds (SSFs)**
- **Committee and Candidate Email Addresses**
- **Changes to Debt Payment for Candidate Committees**
- **Changes for Incumbent Justice and Judge Candidate Committees**
- **Clarification of the Identification and Disclaimer Requirements of Section 47**
- **Changes to the Complaint Process**
- **Questions**

Filing Schedule Changes for State PACs, Local PACs, Political Party Committees and all Local Committees

State PACs: The filing schedule for State PACs was changed to replace the February Quarterly with the January Quarterly. The change has immediate effect. Therefore the new filing schedule for 2016 is as follows:

STATEMENT	COVERAGE DATES	DUE DATE
January Quarterly	10/21/2015 – 12/31/2015	2/1/2016
April Quarterly	1/1/2016 – 4/20/2016	4/25/2016
July Quarterly	4/21/2016 – 7/20/2016	7/25/2016
October Quarterly	7/21/2016 – 10/20/2016	10/25/2016

With the elimination of the February Quarterly, there is no Late Contribution Reporting period for the Special Election on March 8, 2016. The new Late Contribution Reporting Schedule is:

ELECTION	COVERAGE PERIOD	DUE
March 8, 2016	N/A	N/A
May 3, 2016	4/21/2016 – 4/30/2016	48 Hours after Receipt
August 2, 2016	7/21/2016 – 7/30/2016	48 Hours after Receipt
November 8, 2016	10/21/2016 – 11/5/2016	48 Hours after Receipt

(Sections 33 and 35)

Local PACs: The filing schedule for local Political and Independent Committees (PACs) was changed to eliminate the July and October Quarterly Statements due in a year that the committee does not support or oppose a candidate. In addition, locally filed PACs no longer owe the Annual Campaign Statement due January 31st of each year. Committees continue to owe a pre-election and/or post-election campaign statements based on their activity and the immediate disclosure reports such as Late Contribution Reports and Special Election Independent Expenditure Reports. *(Sections 33 and 35)*

Political Party Committees: The filing schedule for Political Party Committees was changed to eliminate the July and October Quarterly Statements due in a year that the committee does not support or oppose a candidate. This restores the filing schedule in effect prior to January of 2014. Committees owe a pre-election and/or post-election campaign statement based on their activity and the Annual Campaign Statement each year. No other statements or filing requirements were affected by these amendments. *(Section 33)*

All Local Committees: Committees filed on the local level with a County Clerk's Office are no longer required to file the Annual Campaign Statement due January 31st of each year. This includes Candidate Committees, PACs and Ballot Question Committees. *(Section 35)*

New Restrictions for Public Bodies Disseminating Communications that Reference a Ballot Question within 60 Days of the Election

Enjoined from Enforcement: An injunction issued on February 5, 2016 by U. S. District Judge John Corbett O'Meara, from the U.S. District Court in Ann Arbor prevents the enforcement of PA 269 of 2015 as it affects Section 57 of the MCFA only.

Commingling Exception Added

Section 21 prohibits the commingling of committee funds with funds of another person. However, Section 21 now provides that a contribution made by **1 or more persons** through a person is not considered commingled if all of the following (A-E) are met:

- A. The individual contribution or aggregated contribution is accompanied by or logically associated with all information required to be disclosed for each individual contributor;
- B. The person making the contribution is the original source of the contribution;
- C. The contribution is not obtained through use of coercion or physical force, as a condition of employment or membership or by using or threatening to use job discrimination or financial reprisals;
- D. Only the person making the contribution exercises control over the amount or recipient of the contribution; and
- E. The contribution is not otherwise prohibited by the MCFA. (*Section 21*)

Operational Changes for Separate Segregated Funds (SSFs)

The new law further redefines commingling by authorizing a SSF and the organizing entity of the SSF or "connected organization" to combine membership dues plus a contribution into a single payment made payable to the corporation or labor organization. "Connected organization" is defined as the corporate, union, or tribal organization that sponsors a SSF. Contributions must meet the following criteria in order for them to be legally combined prior to being transferred into the appropriate accounts.

A contribution by **an individual** to a SSF that is aggregated with a dues or other payments to the connected organization may be collected by or made payable first to the connected organization for subsequent transfer to the SSF if all of the following (A-E) occur:

- A. The **individual** making the contribution does either of the following:
 - i. Specifically indicates in a record or electronic record that the amount collected or a specified portion of dues or other payment is a contribution to the SSF.
 - ii. Fails to return a record or electronic record described above but remits payment in response to a specific contribution solicitation where the solicitation was clearly distinguishable from any dues or other fees requested. The connected organization must maintain a record or electronic record of the solicitation that includes the amount of the

solicited contribution and the amount of any dues or other fees in the solicitation for each contributor.

- B. The connected organization must transfer the entire specified amount of any designated contribution, individually or aggregated with other contributions, to the SSF electronically or by written instrument. Any transfer of designated contributions must be accompanied by or logically associated with a record or electronic record with the information that must be disclosed for each individual contributor.
- C. The connected organization must document all of the following:
 - (i) the identity of the individual contributor.
 - (ii) the date, amount, and method of receipt for each individual contribution.
 - (iii) the date, amount, and method of all transfers to the SSF.
- D. The connected organization and the SSF must adopt a written policy governing the handling, accounting and transfer of these contributions.
- E. In connection with an investigation or hearing the connected organization voluntarily agrees to make available any relevant records requested by the Secretary of State.

The following definitions were added to further clarify these operational changes.

“Connected organization” means a corporation organized on a for-profit or nonprofit basis, a joint stock company, a domestic dependent sovereign, or a labor organization formed under the laws of this or another state or foreign country or a member of any such entity that is not an individual.

“Record” and “electronic record” mean those terms as defined in section 2 of the Uniform Electronic Transactions Act, 2000 PA 305, MCL 450.832.

“Written instrument” means a money order, or a check, cashier’s check, or other negotiable instrument, as those terms are defined in section 3104 of the Uniform Commercial Code, 1962 PA 172, MCL 440.3104, in the name of the connected organization and payable to the separate segregated fund.

The new law further provides that an expenditure made by a corporation to provide for the collection and transfer of contributions to another SSF not established by that corporation or to a SSF not connected to a nonprofit corporation of which the corporation is a member is an in-kind contribution by the corporation and is prohibited under this section. Advance payment or reimbursement to a corporation by a SSF not established by that corporation or by a SSF not connected to a nonprofit corporation of which the corporation is a member does not cure a use of corporate resources otherwise prohibited. An exception exists for expenditures made by a corporation in the ordinary course of its business.

A member of a nonprofit corporation is now allowed to pay expenses associated with the establishment, administration, or solicitation of contributions to the nonprofit’s SSF without having to disclose these expenses as “expenditures” under the MCFA.

Finally, the new law eliminates the requirement for annual affirmative consent for contributions by payroll deduction to a SSF. The law retains the requirement that the contributor consent in writing to the payroll deduction, but once is sufficient. (*Sections 4, 6, 54 and 55*)

Clarification of the Identification and Disclaimer Requirements of Section 47

The amendment clarified section 47 requirements that only an identifier is required on communications that do not contain express advocacy, but do fall within the requirements of section 47. These communications specifically do not require a disclaimer statement. (*Section 47*)

Changes to Debt Payment for Candidate Committees

Contributions can be used to pay off debt from a previous election cycle in two ways:

1. A contribution can be designated in writing by the contributor to pay off debt for a previous election cycle as long as the contribution limit for that cycle has not been and will not be exceeded by the designated contribution for that contributor.
2. A contribution not designated in writing by the contributor can be used to pay off debt of a previous election cycle regardless of the previous election cycle contribution limit if all of the following apply:
 - a. The contribution is considered make for the election cycle that corresponds to the date of the written instrument
 - b. The contribution limits for the current election cycle apply to that contribution
 - c. The contribution does not exceed the amount of outstanding debts for that election cycle. (*Section 52*)

Committee and Candidate Email Addresses

Committees and candidates are required to provide an email address on the committee's Statement of Organization, if available. (*Section 24*)

Changes for Incumbent Justice and Judge Candidate Committees

Incumbent Justices and Judges are automatically afforded the Reporting Waiver after an election or appointment as long as the committee's records substantiate that the committee qualifies for the Reporting Waiver. A committee of an incumbent Justice or Judge is **not** automatically afforded the Reporting Waiver unless and until the committee records substantiate that the committee qualifies for the reporting waiver. A committee of an incumbent Justice or Judge without a reporting waiver must continue to file campaign statements regardless of activity during the reporting period. (*Sections 24 and 33*)

Changes to the Complaint Process

The Complaint Process was amended to require that the Secretary of State post information to the Internet concerning a violation no later than 45 business days after a rebuttal statement is required to be received. Prior to the amendment, the statute provided for 60 business days. (*Section 15*)

Questions

Please feel free to contact the Michigan Department of State's Bureau of Elections for assistance or questions concerning the Michigan Campaign Finance Act:

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