

REVISIONS TO CAMPAIGN FINANCE ACT

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House Bill 5741

Sponsor: Rep. Chris Ward

Committee: Local Government and Urban Policy

Complete to 4-21-04

A SUMMARY OF HOUSE BILL 5741 AS INTRODUCED 4-1-04

House Bill 5741 would amend the Michigan Campaign Finance Act to:

- add a definition of “electioneering communication;”
- provide for funding disclosure by broadcasters of political advertising, and allow the secretary of state to issue temporary restraining orders for political advertising;
- require campaign committees to file amended campaign reports in certain circumstances, and also two non-election year reports;
- require the secretary of state to conduct a hearing about alleged campaign violations in certain circumstances;
- require the secretary of state to report campaign violators and make information about violators available electronically; and,
- increase civil fines for campaign violations.

Electioneering communication. Currently under the law, a corporation, joint stock company, domestic dependent sovereign or labor organization cannot make a contribution or expenditure, or provide volunteer personal services to a campaign, unless the corporation is formed for political purposes. House Bill 5741 would retain this prohibition, and also prohibit a contribution or expenditure for an electioneering communication. The bill would define “electioneering communication” to mean a communication to which all of the following applied: a) the communication referred to a clearly identified candidate; b) it was made within either 1) 60 days before a general or special election; or 2) 30 days before a primary election, or a convention or caucus of a political party that had authority to nominate a candidate. Under the bill, “electioneering communication” would not include: a) communication in a news story, commentary, or editorial distributed through the facilities of a broadcasting station, unless the facilities were owned or controlled by a candidate or a committee, other than an independent committee or a ballot question committee; b) a communication that was an expenditure or an independent expenditure; and, c) a communication in a candidate debate or forum

conducted under rules adopted by the secretary of state, or that solely promoted such a debate or forum and was made by, or on behalf of, the person sponsoring the debate or forum.

Responsibilities of broadcasters. Under the bill, a broadcaster who accepted or provided political advertising during an election campaign would be required to maintain a record of all of the following, with reference to political advertising: a) the names of the people from whom the advertising was accepted; b) the exact nature and extent of advertising services rendered; c) the consideration paid for the advertising, and the manner of payment; d) if the advertising were broadcast, then the rate charged for broadcast time; e) the date and time the advertising was broadcast, published, or disseminated; f) the name of the candidate to whom the communication referred, and the office to which he or she was seeking election; and g) the name, address, and telephone number of the purchaser of the advertising and, if the purchaser were not the candidate, the relationship of the purchaser to the candidate.

The bill requires that a broadcaster keep a record of the information (noted above) for two years from the date of broadcast, publication, or dissemination, and make the record available to public inspection during regular business hours. A person who violated these provisions would be subject to a civil fine of not more than \$50,000, or five times the cost of the political advertising that was the subject of the violation, whichever was greater.

Secretary of state temporary restraining orders. The bill specifies that in connection with a complaint alleging a violation of the sections of the act relating to a political advertisement, one or more of the following could file a request with the secretary of state to issue a temporary restraining order: a) a candidate; b) a political party; c) a house or senate political party caucus committee; d) a ballot question committee; or e) any other person directly affected by the advertisement.

If the secretary of state determined that the party requesting the temporary restraining order was likely to succeed on the merits of the complaint, then he or she could issue a temporary restraining order containing terms the secretary of state determined to be just. Unless a shorter time was stated in the order, the order would remain in effect until a final decision or order was issued on the complaint, or, if the complaint were referred to the attorney general and an action begun, until a final judgment was entered in the action. The bill specifies that a determination by the secretary of state would be subject to review by the circuit court, under Chapter 6 of the Administration Procedures Act, as if it were a final decision or order. Further, an action could be started in the circuit court to enforce a temporary restraining order.

Campaign committee amended reports; non-election year reports. Currently under the law, an expenditure cannot be made by an agent or an independent contractor, including an advertising agency, on behalf of or for the benefit of a person, unless the expenditure is reported by the committee as if it had been made directly by the committee, unless the agent or independent contractor files a report of an independent expenditure. The bill

would retain this provision, and in addition specify that if a committee reported an expenditure of money paid to an agent or independent contractor, and if the agent or contractor made an expenditure after the closing date of the campaign statement in which the committee reported the expenditure, then the committee treasurer (or other individual designated on the statement of organization as responsible for the committee's record keeping, report preparing, or report filing) would be required to file an amended campaign statement that contained a detailed itemization of the expenditure. The amended campaign statement would have to be filed with the filing official within 48 hours after the expenditure was made.

Also under current law, a campaign committee (other than an independent committee or a political committee) is required to file campaign statements with the secretary of state, including an annual statement not later than January 31 (having a closing date of December 31). House Bill 5741 would retain this provision, and in addition specify that in each year in which the committee was *not* required to file pre-election and post-election campaign statements, then campaign statements would be required by July 25 (with a closing of July 20), and October 25 (with a closing of October 20).

Secretary of state's public report. Under the bill, within 30 days following a date on which statements from candidate committees are due, the secretary of state would be required to prepare and make available to the public a report of candidates and committees that had been determined to have violated the Campaign Finance Act or the Michigan Election Law, containing a) the name of each violator, b) the amount of fine assessed for the violation, and, c) whether the fine had been paid. In addition, the secretary of state would have to make available on the Internet all of the following: a) declaratory rulings under the act, b) interpretive statements under this act, c) the annual summary of the declaratory rulings and interpretative statements issued by the secretary of state, and, d) the report of violations required by this subdivision.

Required hearing; increase in civil fines. Currently under the law, a person may file with the secretary of state a complaint that alleges a violation of the Campaign Finance Act, and the secretary of state must act upon that complaint within a timely fashion, specified in the statute. Under the law, the secretary of state must attempt to correct the violation by using informal methods (such as a conference, conciliation, or persuasion) and can enter into a conciliation agreement. If unable to correct or prevent a further violation, the secretary of state may refer the matter to the attorney general for the enforcement of a criminal penalty. The secretary of state also may start a hearing to determine whether a civil violation of the act has occurred; however, a hearing cannot be begun during the period beginning 30 days before an election. If after a hearing the secretary of state determines that a violation has occurred, he or she 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 for each violation.

The bill would retain these provisions with two modifications. First, under the bill, if a complaint were filed with the secretary of state within 60 days before an election (and he or she determined that there was reason to believe a violation occurred (and did not refer

the matter to the attorney general), then the secretary of state would be required to conduct a hearing, and issue a final decision and order within 10 days after a rebuttal statement had been filed by the claimant, or the time to file a rebuttal statement had passed. Second, the bill specifies that unless otherwise provided in the act, the maximum amount of the civil fine for each violation would be the following: a) \$5,000 or, if the violation involved a contribution or expenditure, the amount of the contribution or expenditure whichever was greater (unless b, below, applied); or, b) if the violation was knowing and willful, \$10,000 or, if the violation involved a contribution or expenditures, twice the amount of the contribution or expenditure, whichever was greater.

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