

PUBLIC OFFICERS FINANCIAL DISCLOSURE ACT (EXCERPT)
Act 281 of 2023

15.713 Secretary of state; duties and responsibilities; declaratory ruling; filing of violations complaint; investigation; rebuttal statement; determination; hearing; final decision or order; report preservation.

Sec. 13.

(1) The secretary of state shall do all of the following:

(a) Make available through the secretary of state's offices appropriate forms, instructions, and manuals required by this act.

(b) Create and operate an electronic, internet-accessible system to receive statements and reports required under this act to be filed with the secretary of state.

(c) Accept statements and reports required by this act to be filed with the secretary of state that are filed via email as an acceptable alternative to the electronic filing system created under subdivision (b). This subdivision applies retroactively to statements and reports filed by email for the reporting period of January 1, 2023 to December 31, 2023.

(d) Publish the financial disclosure report form described in section 6, and create the instructions and manuals required under this act.

(e) Issue declaratory rulings to implement this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(f) On receiving 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 public officer or an individual whose participation is essential to the preparation of the report.

(ii) Other unique, unintentional factors beyond the control of the public officer that are not the result of 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 because of a fire, flood, theft, or similar reason and difficulties related to the transmission of the filing to the secretary of state, such as exceptionally bad weather.

(g) As soon as practicable, but not later than 5 business days after a report required to be filed under this act is received, make the report or all of the contents of the report available without charge to the public on a separate webpage or its website homepage.

(h) Not later than 9 business days after the deadline for filing a report under this act, notify, by registered mail or email, an individual of any error or omission in the individual's report or that the individual failed to file the required report.

(2) The secretary of state shall issue a declaratory ruling 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. Not later than 2 business days after receiving a request for a declaratory ruling, the secretary of state shall make the request available in the manner provided for under subsection (1)(g). An interested person may submit written comments regarding the request to the secretary of state not later than 10 business days after the date the request is made available to the public. Not later than 45 business days after receiving a declaratory ruling request, the secretary of state shall make a proposed response available in the manner provided for under subsection (1)(g). An interested person may submit written comments regarding the proposed response to the secretary of state not later than 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 not later than 60 business days after receiving a request for a declaratory ruling. The secretary of state may refuse to issue a declaratory ruling or an interpretive statement under this act if the request is anonymous, the secretary of state determines that the subject matter of the request is frivolous on its face, or the request is indefinite or lacks specificity. 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 issue an interpretive statement providing an informational response to the question presented within the 60-day period. A declaratory ruling or interpretive statement issued under this section must not state a general rule of law, other than that which is stated in this act, 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 interpretive statements issued by the secretary of state under this section.

(5) A person may file with the secretary of state a complaint that alleges a violation of this act. Not later than 5 business days after a complaint that meets the requirements of subsection (6) is filed, the secretary of state shall mail notice to the person against whom the complaint is filed. The notice must include a copy of the complaint. Not later than 15 business days after the 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 mail a copy of a response received to the complainant. Not later than 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. If, on review of the complaint, the secretary of state determines that the complaint is frivolous, illegible, indefinite, or unsigned, or does not identify an alleged violator, allege a violation of the act, or contain a verification statement, the secretary of state may summarily dismiss the complaint without prejudice. If a complaint is summarily dismissed, the complainant must be notified in writing as to the reason the complaint was dismissed. The secretary of state may consolidate similar complaints.

(6) A complaint filed under subsection (5) must 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 the complainant's 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) A person shall not file a complaint with a false certificate under subsection (6)(c). 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).

(8) The secretary of state shall investigate allegations brought under this act. If an allegation involves the secretary of state, or the secretary of state's spouse, the secretary of state shall refer the matter to the attorney general to determine whether a violation of this act occurred.

(9) Not later than 45 business days after receiving a rebuttal statement submitted under subsection (5) or, if no response or rebuttal is received under subsection (5), 45 business days after receiving a complaint under subsection (5), the secretary of state shall post on the secretary of state's website whether there may be reason to believe that a violation of this act occurred. If the secretary of state determines there may be reason to believe that a violation of this act occurred or determines to terminate its proceedings, the secretary of state shall, not later than 30 days after that determination, post on the secretary of state's 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 action with respect to matters covered in the conciliation agreement. The secretary of state shall, not later than 30 days after a conciliation agreement is signed, post that agreement on the department's 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 may commence a hearing as provided in subsection (10) for enforcement of this act.

(10) The secretary of state may commence a hearing to determine whether a violation of this act occurred. The hearing must be conducted in accordance with chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288.

(11) A final decision or order issued by the secretary of state under this act is subject to judicial review as provided under 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 act in the general fund. The secretary of state may bring an action in circuit court to recover the amount of a civil fine.

(12) The secretary of state shall review a report or statement filed under this act and may investigate an apparent violation of this act. If the secretary of state determines that there may be reason to believe a violation of this act occurred and the procedures prescribed in subsection (9) have been complied with, the secretary of state may commence a hearing under subsection (10) to determine whether a violation of this act occurred.

(13) There is no private right of action, either in law or in equity, under 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.

(14) The secretary of state shall preserve a report filed under this act for 15 years after the date the report is filed. If the secretary of state or attorney general determines under this section that a violation of this act occurred,

the secretary of state shall preserve all complaints, orders, decisions, or other documents related to that violation for 15 years after the date of the determination or the date the violation is corrected, whichever is later. Reports filed under this act may be reproduced under the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406. After the required preservation period, the reports, or the reproductions of the reports, may be disposed of in the manner prescribed in the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594, and section 11 of the Michigan history center act, 2016 PA 470, MCL 399.811.

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