

SENATE BILL NO. 590

October 17, 2023, Introduced by Senator CAVANAGH and referred to the Committee on Elections and Ethics.

A bill to amend 1954 PA 116, entitled
"Michigan election law,"
by amending section 13 (MCL 168.13) and by adding chapter XXXIA.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. **(1)** Notwithstanding any other provision of the law to
2 the contrary, **and except as otherwise provided under subsection**
3 **(2)**, anything required by this act to be done by a day certain,
4 ~~except the final day for applying for an absentee ballot,~~ if that
5 day falls on a Saturday, Sunday, or legal holiday, may be done

1 within the same time limits on the next secular day.

2 (2) This section does not apply to either of the following:

3 (a) The final day for applying for an absent voter ballot.

4 (b) Any deadline provided for under chapter XXXIA.

5 CHAPTER XXXIA

6 CONTESTING ELECTIONS

7 Sec. 850. As used in this chapter:

8 (a) "Defendant" means the individual who is certified as the
9 winner of an election that is contested under this chapter.

10 (b) "Election materials" means voter registration
11 applications, absent voter ballot applications, applications to
12 vote as described under section 523, paper poll books, any list
13 that includes electors who submit an absent voter ballot, and
14 ballots.

15 (c) "Plaintiff" means an individual who files an action
16 contesting the certification of an election under this chapter.

17 (d) "Presidential election" means the election of electors of
18 President and Vice President of the United States as provided under
19 section 43.

20 Sec. 850a. (1) If a candidate for an office wishes to contest
21 the certification of that election, that candidate shall contest
22 the election as provided under this chapter. In addition, the
23 governor, attorney general, and secretary of state are authorized
24 to contest the certification of an election as provided under this
25 chapter. The procedure provided under this chapter is the only
26 means by which an individual may seek judicial relief from the
27 certification of an election.

28 (2) In an action contesting the certification of an election
29 under this chapter, the governor, attorney general, secretary of

1 state, and any candidate listed on the ballot for the office at
2 issue may intervene.

3 (3) Any deadline provided under this chapter applies
4 regardless of whether that deadline falls on a Saturday, Sunday, or
5 holiday.

6 (4) An action contesting the certification of an election
7 under this chapter shall not delay or otherwise impact any of the
8 following:

9 (a) The authority or responsibility of the board of state
10 canvassers or a board of county canvassers to certify an election
11 as required under this act.

12 (b) The governor's authority or responsibility to issue a
13 certificate of ascertainment as required under section 46.

14 (c) The authority or responsibility of the board of state
15 canvassers or a board of county canvassers to perform a recount as
16 provided under chapter XXXVIII.

17 (5) An action contesting the certification of an election
18 under this chapter shall not be considered to encompass an election
19 audit under this act.

20 Sec. 850b. A plaintiff shall contest the certification of an
21 election on only 1 or both of the following grounds:

22 (a) The defendant did not receive the largest number of votes
23 eligible to be counted in that election.

24 (b) Fraud or error occurred in the canvass or returns of the
25 votes cast at the election, and absent that fraud or error, the
26 defendant would not have received the largest number of votes
27 eligible to be counted in that election.

28 Sec. 850c. (1) An action contesting the certification of an
29 election for an office described in section 841(1) must be filed in

1 the court of claims. If an action contesting the certification of
2 an election for an office described in section 841(1) is filed in a
3 court other than the court of claims, that court must immediately
4 transfer that action to the court of claims.

5 (2) An action contesting the certification of an election for
6 an office not described in section 841(1) must be filed in the
7 circuit court of the county in which the office at issue is
8 located. If an action contesting the certification of an election
9 for an office not described in section 841(1) is filed in a court
10 other than the proper circuit court, that court must immediately
11 transfer that action to the circuit court of the county in which
12 the office is located.

13 Sec. 850d. (1) Except as otherwise provided under this
14 subsection, an action contesting the certification of an election
15 under section 850c(1) or (2) must be filed with the appropriate
16 court, and served on the defendant and any other candidate listed
17 on the ballot for that office, no earlier than the certification
18 date of the election being contested and no later than 5 days after
19 the certification of that election is complete. An action
20 contesting the certification of a presidential election must be
21 filed with the court of claims, and served on the defendant and any
22 other candidate listed on the ballot for the presidential election,
23 no later than 2 days after the certification of that election by
24 the board of state canvassers is complete. Service of the initial
25 pleading in an action contesting the certification of an election
26 under this chapter must satisfy MCR 2.105(A).

27 (2) If an action is not timely filed or served as provided
28 under this section, the court shall dismiss that action with
29 prejudice.

1 (3) A plaintiff filing an action under this chapter must state
2 in the plaintiff's initial pleading the grounds under section 850b
3 on which the contest is made and allege supporting facts with
4 specificity. If the grounds for contesting the certification of the
5 election are brought under section 850b(a), the plaintiff must
6 allege facts that, if true, would demonstrate by clear and
7 convincing evidence that the defendant did not receive the highest
8 number of votes eligible to be counted in that election. If the
9 grounds for contesting the certification of the election are
10 brought under section 850b(b), the plaintiff must allege facts
11 that, if true, would demonstrate by clear and convincing evidence
12 that fraud or error occurred in the canvass or returns of the votes
13 cast at the election, and absent that fraud or error, the defendant
14 would not have received the largest number of votes eligible to be
15 counted in that election.

16 (4) A plaintiff must attach to the initial pleading filed in
17 an action under this chapter an affidavit that sets forth specific
18 facts known to the affiant that support the truth of the facts
19 alleged in the action. An action is not considered filed or served
20 if the plaintiff does not attach, file, and serve the affidavit
21 required under this subsection.

22 (5) In an action contesting the certification of an election
23 under this chapter, a plaintiff may not seek, and the court shall
24 not grant, any preliminary injunctive relief.

25 Sec. 850e. (1) Except as otherwise provided under this
26 subsection, in an action contesting the certification of an
27 election under this chapter, the defendant shall file an answer to
28 the initial pleading no later than 5 days after being served with
29 the pleading. In an action contesting the certification of a

1 presidential election under this chapter, the defendant shall file
2 an answer to the initial pleading no later than 3 days after being
3 served with the pleading. A defendant's answer to an action
4 contesting the certification of an election under this chapter must
5 comply with MCR 2.111(C).

6 (2) If a defendant fails to timely file an answer as required
7 under this section, the court shall proceed ex parte to a trial
8 under section 850g. The court shall not enter a default judgment
9 based on the defendant's failure to file an answer.

10 (3) Except as otherwise provided under this subsection, in
11 addition to filing an answer, a defendant may file a motion to
12 dismiss the action no later than 5 days after service of the
13 initial pleading on the defendant. In an action contesting the
14 certification of a presidential election, a defendant may file a
15 motion to dismiss the action no later than 3 days after service of
16 the initial pleading on the defendant. A motion to dismiss filed
17 under this subsection may be based on any of the following grounds:

18 (a) The action was not filed timely or was improperly filed or
19 served.

20 (b) The facts alleged in the initial pleading do not satisfy
21 the requirements under section 850d(3).

22 (c) The initial pleading contesting the certification of an
23 election under this chapter does not contain the affidavit required
24 under section 850d(4).

25 (4) Except as otherwise provided under this subsection, if a
26 defendant files a motion to dismiss, the plaintiff shall file a
27 response no later than 5 days after the motion to dismiss is filed.
28 In an action contesting the certification of a presidential
29 election, if a defendant files a motion to dismiss, the plaintiff

1 shall file a response no later than 2 days after the motion to
2 dismiss is filed.

3 (5) The court may sua sponte dismiss an action on any of the
4 grounds listed in subsection (3).

5 (6) Except as otherwise provided under this subsection, the
6 court may alter any filing deadline in this chapter for good cause.
7 In an action contesting the certification of a presidential
8 election, the court shall not alter any filing deadline set forth
9 in this chapter.

10 Sec. 850f. (1) Any party to an action contesting the
11 certification of an election under this chapter may request leave
12 from the court to inspect election materials for the purpose of
13 preparing for trial. The court shall not grant leave to inspect
14 election materials under this section unless the inspection of
15 those election materials is reasonably related to valid claims and
16 is proportional to the needs of the action. An order granting leave
17 under this section must include a protective order that provides
18 for both of the following:

19 (a) Anything discovered during the party's inspection of the
20 election materials must not be used for any purpose other than the
21 election contest at issue.

22 (b) A party shall not take custody of any election materials
23 outside of the presence of the court, all other parties, and any
24 election official required by federal or state law to maintain
25 custody of the election materials.

26 (2) A party is not permitted to inspect any electronic voting
27 system, electronic poll book, or any other materials that would
28 jeopardize the secretary of state's or any clerk's ability to
29 protect the security of the election at issue, any future election,

1 or the qualified voter file.

2 (3) The inspection of election materials under this section is
3 the only form of discovery that the parties to an action contesting
4 the certification of an election under this chapter may conduct,
5 and the parties to an action under this chapter are prohibited from
6 engaging in private discovery.

7 Sec. 850g. (1) If a motion to dismiss an action contesting the
8 certification of an election is not filed, or if a court denies a
9 motion to dismiss an action contesting the certification of an
10 election, the court shall, except as otherwise provided under this
11 subsection, hold a trial of that action as soon as practicable. In
12 an action contesting the certification of a presidential election,
13 the court shall hold a trial of that action as soon as practicable,
14 but no later than 7 days after the action is filed.

15 (2) If the action is brought based on the grounds under
16 section 850b(a), the plaintiff must prove by clear and convincing
17 evidence that the defendant did not receive the highest number of
18 votes eligible to be counted in that election. If the action is
19 brought based on the grounds under section 850b(b), the plaintiff
20 must prove by clear and convincing evidence that fraud or error
21 occurred in the canvass or returns of votes cast at the election,
22 and absent that fraud or error, the defendant would not have
23 received the highest number of votes eligible to be counted in that
24 election.

25 (3) Except as otherwise provided under this subsection, after
26 a trial of an action under this chapter, the court shall issue a
27 written decision and final judgment as soon as practicable. Except
28 as otherwise provided under this subsection, in an action
29 contesting the certification of a presidential election, the court

1 shall issue a written decision and final judgment as soon as
2 practicable, but no later than 10 days after the action is filed.
3 If a court issues an oral decision with an indication that a
4 written decision will follow that oral decision, the court may
5 enter final judgment upon issuing the oral decision.

6 (4) In an action contesting the certification of an election
7 under this chapter, a court shall not issue an order that prevents
8 any of the following:

9 (a) The board of state canvassers or a board of county
10 canvassers from certifying the results of an election as required
11 under this act.

12 (b) The governor from issuing a certificate of ascertainment
13 as required under section 46.

14 (c) The board of state canvassers or a board of county
15 canvassers from performing a recount as provided under chapter
16 XXXVIII.

17 (5) If a court issues a final judgment granting any form of
18 relief to a plaintiff, that judgment is stayed until the expiration
19 of time allowed for any party to file an appeal. If a court issues
20 a final judgment granting any form of relief to a plaintiff and an
21 appeal from that final judgment is filed, the judgment is stayed
22 until the conclusion of all appellate proceedings. An appellate
23 court may alter the stay imposed under this subsection for good
24 cause.

25 (6) If an appeal is filed from a judgment in an action
26 contesting the certification of a presidential election, the appeal
27 must be fully concluded no later than the day before the date the
28 electors for President and Vice President convene as provided under
29 section 47.

1 (7) Unless the plaintiff prevails in an action filed under
2 this chapter, the defendant is entitled to actual costs and
3 attorney fees from the plaintiff. Unless the plaintiff prevails in
4 an action filed under this chapter, the plaintiff must reimburse
5 the reasonable costs incurred by any public office, including, but
6 not limited to, the secretary of state and any county, city, or
7 township office, for providing access to any election materials
8 pursuant to a court-ordered inspection under section 850f. A
9 plaintiff who prevails in an action filed under this chapter may,
10 if a court finds the defendant engaged in fraud, recover actual
11 costs and attorney fees from the defendant.

12 Enacting section 1. This amendatory act does not take effect
13 unless all of the following bills of the 102nd Legislature are
14 enacted into law:

15 (a) Senate Bill No. 529.

16 (b) Senate Bill No. 591.

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