

HOUSE No. 3978

The Commonwealth of Massachusetts

PRESENTED BY:

Todd M. Smola

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the Secretary of State and ethics reform.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE SECRETARY OF STATE AND ETHICS REFORM.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 **SECTION 1.** Section 41 of chapter 3 OF THE General Laws, as appearing in the 2006 Official
2 Edition, is hereby amended by adding the following 2 paragraphs:-
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4 The state secretary shall adopt regulations pursuant to chapter 30A to carry out the provisions of
5 sections 39 to 50, inclusive.
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7 The state secretary shall, upon written request from a person who is or may be subject to sections
8 39 to 50, inclusive, render advisory opinions on the requirements of those sections. An opinion
9 rendered by the state secretary, until and unless amended or revoked, shall be a defense in a
10 criminal action brought under sections 39 to 50, inclusive, and shall be binding on the state
11 secretary and the attorney general in any subsequent proceedings concerning the person who
12 requested the opinion and who acted in good faith, unless material facts were omitted or
13 misstated by the person in the request for an opinion. Such requests shall be confidential; but the
14 state secretary may publish such opinions if the name of the requesting person and any other
15 identifying information is not included in such publication, unless the requesting person consents
16 to such inclusion.
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18 **SECTION 2.** Said chapter 3 of the General Laws, as so appearing, is hereby further amended by
19 striking out section 45 and inserting in place thereof the following section:-
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21 Section 45. (a) Upon receipt of a sworn complaint signed under pains and penalties of perjury
22 and upon receipt of evidence which is deemed sufficient by the state secretary, the state
23 secretary shall initiate a preliminary inquiry into any alleged violation of sections 39 to 50. Prior
24 to the commencement of a preliminary inquiry into any such alleged violation, the state secretary
25 shall notify the attorney general of such action. All proceedings and records relating to a
26 preliminary inquiry or initial staff review to determine whether to initiate an inquiry shall be
27 confidential, except that the state secretary may provide to: (1) the attorney general, the United
28 States Attorney or a district attorney of competent jurisdiction, evidence which may be used in a
29 criminal proceeding; (2) the inspector general information concerning fraud, waste, or abuse in

30 the expenditure of public funds; (3) the state ethics commission concerning violations of chapters
31 268A and 268B; and (4) the director of the office of campaign and political finance information
32 concerning violations of chapter 55. Any information provided by the state secretary pursuant to
33 this section shall be confidential in accordance with this section and section 4 of chapter 268B,
34 except that such information may be used by the officer or agency to whom it was provided in
35 any investigation or subsequent proceedings. The state secretary shall notify any person who is
36 the subject of the preliminary inquiry of the existence of such inquiry and the general nature of
37 the alleged violation within 30 days of the commencement of the inquiry.

38
39 (b) If a preliminary inquiry fails to indicate reasonable cause for belief that any provision
40 of sections 39 to 50 of this chapter has been violated, the state secretary shall immediately
41 terminate the inquiry and so notify, in writing, the complainant, if any, and
42 the person who had been the subject of the inquiry.

43
44 (c) If a preliminary inquiry indicates reasonable cause for belief that any provision of
45 sections 39 to 50 has been violated, the state secretary may
46 initiate an adjudicatory proceeding to determine whether there has been such a violation.

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48 (d) The state secretary may require by summons the attendance and testimony of witnesses and
49 the production of books, papers and other records relating to any matter being investigated by it
50 pursuant to this chapter. Such summons may be issued by the state secretary and shall be served
51 in the same manner as summonses for witnesses in civil cases, and all provisions of law relative
52 to summonses issued in such cases, including the compensation of witnesses, shall apply to
53 summonses issued by the state secretary. Such summonses shall have the same force, and be
54 obeyed in the same manner, and under the same penalties in case of default, as if issued by order
55 of a justice of the superior court and may be quashed only upon motion of the summonsed party
56 and by order of a justice of the superior court .

57
58 (e) The state secretary or his designee may administer oaths and may hear testimony or receive
59 other evidence in any proceeding.

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61 (f) All testimony in an adjudicatory proceeding shall be under oath. All parties shall have the
62 right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who
63 testify, to submit evidence, and to be represented by counsel. Before testifying, all witnesses
64 shall be given a copy of the regulations governing adjudicatory proceedings. All witnesses shall
65 be entitled to be represented by counsel

66
67 (g) Any person whose name is mentioned during an adjudicatory proceeding of the state
68 secretary and who may be adversely affected thereby may appear personally before the state
69 secretary on his own behalf, with or without an attorney, to give a statement in opposition to
70 such adverse mention or file a written statement of such opposition for incorporation into the
71 record of the proceeding.

72
73 (h) All hearings in adjudicatory proceedings of the state secretary carried out pursuant to
74 the provisions of this section shall be public.

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76 (i) Within 30 days after completion of deliberations, the state secretary shall publish a
77 written report of his findings and conclusions.

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79 (j) Upon a finding pursuant to an adjudicatory proceeding that there has been a violation
80 of this chapter, the state secretary may issue an order:

81 (1) requiring the violator to cease and desist such violation of sections 39 to 50:

82 (2) requiring the violator to file any report, statement or other information as
83 required by sections 39 to 50;

84 (3) suspending for a specified period or revoking the license and registration of
85 the violator; or

86 (4) requiring the violator to pay a civil penalty of not more than \$10,000 for each
87 violation of this chapter.

88

89 The state secretary may file a civil action in superior court to enforce this order.

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91 (k) Final action by the state secretary under this section shall be subject to review in
92 superior court upon petition of any party in interest filed within 30 days after the action
93 for which review is sought. The court shall enter a judgment enforcing, modifying, or
94 setting aside the order of the state secretary, or it may remand the proceedings to the state
95 secretary for such further action as the court may direct. If the court modifies or sets aside
96 the state secretary's order or remands the proceedings to the state secretary, the court
97 shall determine whether such modification, set aside, or remand is substantial. If the court
98 does find such modification, set aside, or remand to be substantial, the petitioner shall be
99 entitled to be reimbursed from the treasury of the commonwealth for reasonable
100 attorneys' fees and all court costs incurred by him in the defense of the charges contained
101 in the proceedings. The amount of such reimbursement shall be awarded by the court but
102 shall not exceed \$20,000 per person, per case.

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