

# HOUSE BILL No. 5317

September 2, 2009, Introduced by Reps. Opsommer, Genetski, Rick Jones and Wayne Schmidt and referred to the Committee on Ethics and Elections.

A bill to regulate political activity; to regulate certain candidates for elective office and state officials; to require financial statements and reports; to prescribe the powers and duties of certain state and local governmental officers and agencies; to impose fees; to prescribe penalties and civil sanctions; and to provide remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "financial disclosure act".

3           Sec. 2. As used in this act:

4           (a) "Candidate" means that term as defined in section 3 of the  
5 Michigan campaign finance act, 1976 PA 388, MCL 169.203.

1 (b) "Candidate for state or local office" means a candidate  
2 for any of the following offices:

3 (i) Governor.

4 (ii) Lieutenant governor.

5 (iii) Secretary of state.

6 (iv) Attorney general.

7 (v) State senator.

8 (vi) State representative.

9 (vii) Member of the state board of education.

10 (viii) Justice of the supreme court.

11 (ix) Regent of the university of Michigan, member of the board  
12 of trustees of Michigan state university, or member of the board of  
13 governors of Wayne state university.

14 (x) An elective public office for which the salary is greater  
15 than 1.5 times the statewide median gross income as determined  
16 under section 143(f) of the internal revenue code, 26 USC 143(f),  
17 excluding a judge of a court of record.

18 (xi) The head of the Michigan economic development corporation.

19 (c) "Earned income" means salaries, tips, and other  
20 compensation, and net earnings from self-employment for the taxable  
21 year.

22 (d) "Household assets" means household goods and personal  
23 effects, including jewelry, collections of stamps, coins, firearms,  
24 or artwork, household equipment, household furnishings, clothing,  
25 and nonrecreational vehicles for personal use, if the assets are  
26 not held for investment purposes.

27 (e) "Immediate family" means a dependent child, a spouse, any

1 other individual residing in the same household, or an individual  
2 claimed as a dependent for federal income tax purposes by the  
3 person required to file a report under this act.

4 (f) "Income" means money or any thing of value received, or to  
5 be received as a claim on future services, whether in the form of a  
6 fee, salary, expense, allowance, forbearance, forgiveness,  
7 interest, dividend, royalty, rent, capital gain, grant,  
8 scholarship, or any other form of recompense that is considered  
9 income under the internal revenue code, 26 USC 1 to 9833.

10 (g) "Municipality" means a county, township, city, village,  
11 school district, intermediate school district, community college  
12 district, metropolitan district, district library, or other local  
13 governmental authority.

14 (h) "Principal residence" means that term as defined under  
15 section 7dd of the general property tax act, 1893 PA 206, MCL  
16 211.7dd.

17 (i) "State or local official" means any of the following:

18 (i) The holder of an office described in subdivision (b).

19 (ii) The head of each principal department, if the office is  
20 filled by appointment.

21 (iii) A member of a board or commission heading a principal  
22 department, if the office is filled by appointment.

23 Sec. 3. (1) If an individual is a state or local official at  
24 any time during a calendar year, that individual shall file with  
25 the secretary of state by May 1 of the following year a report that  
26 meets the requirements of section 4. This subsection does not apply  
27 to an individual who was a state or local official only on the

1 first day of the calendar year.

2 (2) If an individual is a candidate for state office and has  
3 not already filed a report under subsection (1) covering the  
4 preceding calendar year, that individual shall file with the  
5 secretary of state a report that meets the requirements of section  
6 4 within 30 days after the earliest of the following events, but  
7 not later than 11 days before the first election at which the  
8 individual's name appears on the ballot as a candidate following  
9 the event:

10 (a) If the individual files a fee, affidavit of incumbency or  
11 identity, or nominating petition for the state office, the deadline  
12 for filing the fee, affidavit of incumbency or identity, or  
13 nominating petition established by the Michigan election law, 1954  
14 PA 116, MCL 168.1 to 168.992.

15 (b) If the individual is nominated at a political party caucus  
16 or convention, the deadline for holding the caucus or convention  
17 established by the Michigan election law, 1954 PA 116, MCL 168.1 to  
18 168.992.

19 (3) An individual who has not already filed a report under  
20 subsection (1) covering the preceding calendar year and who will  
21 appear on the ballot as a candidate for local office in a regular  
22 or special election shall file a report that meets the requirements  
23 of section 4 with the secretary of state by September 1 of the  
24 calendar year of the election.

25 (4) An individual who is a candidate for the office of  
26 governor shall file with the secretary of state on June 15 of the  
27 year in which the election for the office of governor will be held

1 a copy of the individual's federal tax returns for the 3 preceding  
2 calendar years. A social security number on a tax return filed  
3 under this subsection may be redacted.

4 (5) An individual is not required to file more than 1 report  
5 under this act in any calendar year.

6 Sec. 4. (1) Subject to section 5 and except as provided in  
7 section 6, a report required by section 3 shall include a complete  
8 statement of all of the following:

9 (a) The full name, address, occupation of, and the state  
10 office held or sought by, the individual filing the report.

11 (b) The name and address of each employer of the individual  
12 filing the report during the calendar year covered by the report.

13 (c) Both of the following, as applicable:

14 (i) The source, type, and amount or value of earned income  
15 received during the preceding calendar year by the individual  
16 filing the report if the total earned income from that source  
17 equals \$1,000.00 or more during that calendar year.

18 (ii) The source and type of earned income received during the  
19 preceding calendar year by an immediate family member of the  
20 individual filing the report if the total earned income from that  
21 source equals \$1,000.00 or more during that calendar year.

22 (d) The source, type, and amount or value of all other income  
23 not reported under subdivision (c) that is received during the  
24 preceding calendar year by the individual filing the report or a  
25 member of the immediate family of that individual if the total  
26 amount or value of the other income from that source equals  
27 \$1,000.00 or more during that calendar year.

1           (e) The identity and value of each asset, except household  
2 assets, held during the preceding calendar year by the individual  
3 filing the report or a member of the immediate family of that  
4 individual, including, but not limited to, investments, real or  
5 personal property, or cash, if the asset had a fair market value of  
6 \$2,500.00 or more at any time the asset was held during the  
7 preceding calendar year. However, if the individual filing the  
8 report owns, controls, or has an interest in all or a portion of a  
9 farm, trust, or business, the identity and value of each asset held  
10 during the preceding year that is used in the operation or  
11 management of the farm, trust, or business is not required to be  
12 reported under this subdivision if the report includes a complete  
13 statement of the identity and value of the farm, trust, or  
14 business.

15           (f) The identity and address of the creditor and value of each  
16 liability owed during the preceding calendar year by the individual  
17 filing the report or a member of the immediate family of that  
18 individual if the amount of the liability was \$10,000.00 or more at  
19 any time during the preceding calendar year. This subdivision does  
20 not apply to loans secured by household assets.

21           (g) A brief description and value of a purchase, sale, or  
22 exchange of real property, or of stocks, bonds, commodities,  
23 futures, or other forms of securities during the preceding calendar  
24 year by the individual filing the report or a member of the  
25 immediate family of that individual, if the value is \$1,000.00 or  
26 more. This subdivision does not require a description of each  
27 purchase, sale, or exchange of stocks, bonds, commodities, or other

1 forms of securities if those items are part of a mutual fund and if  
2 the identity and value of the mutual fund is otherwise reported  
3 under this act.

4 (h) Except as otherwise provided by this subdivision, the  
5 identity of all positions held by the individual filing the report  
6 during the preceding calendar year as an officer, director, member,  
7 trustee, partner, proprietor, representative, employee, or  
8 consultant of a corporation, limited liability company, limited  
9 partnership, partnership, or other business enterprise; of a  
10 nonprofit organization; of a labor organization; or of an  
11 educational or other institution other than this state. An  
12 individual filing the report who is required to have a license to  
13 practice or engage in a particular occupation or profession is not  
14 required to identify a position held as a consultant of a  
15 corporation unless the corporation is a publicly held corporation  
16 that has shares that are listed or traded over the counter or on an  
17 organized exchange or has gross revenues over \$4,000,000.00. This  
18 subdivision does not require the reporting of a position held in a  
19 religious, social, fraternal, or political entity, or of a position  
20 solely of an honorary nature for which no compensation is payable.

21 (i) If the individual filing the report has an agreement or  
22 has made an arrangement with respect to future employment, a leave  
23 of absence during that individual's term of office, continuation of  
24 payments by a former employer, or continuation of participation in  
25 an employee benefit plan maintained by a former employer, a  
26 description of the agreement or arrangement, including the dates,  
27 parties, and terms.

1 (j) The source, nature, and value of all gifts or  
2 reimbursements, including those related to travel, sporting events,  
3 and other recreational activities but excluding campaign  
4 contributions, aggregating \$250.00 or more that the individual  
5 filing the report or a member of his or her immediate family  
6 received during the preceding calendar year from a registered state  
7 or federal lobbyist or lobbyist agent.

8 (2) Information required to be reported under this section  
9 shall include information with respect to the holdings of a trust  
10 that is not an irrevocable trust and the income from any trust or  
11 other financial arrangement from which income is received by, or  
12 with respect to which a beneficial interest in principal or income  
13 is held by, an individual required to file a report under this  
14 section or an immediate family member of the individual.

15 (3) Information required to be reported under this section  
16 need not be identified to a particular member of the immediate  
17 family of the individual filing the report.

18 (4) A report required under section 3 shall include a sworn  
19 statement by the person required to file that the report is  
20 complete and accurate.

21 Sec. 5. (1) An amount or value reported under section 4(1)(c),  
22 (d), (e), or (g) shall be reported by category as follows:

23 (a) \$1,000.00 or more but less than \$10,000.00.

24 (b) \$10,000.00 or more but less than \$50,000.00.

25 (c) \$50,000.00 or more but less than \$100,000.00.

26 (d) \$100,000.00 or more but less than \$500,000.00.

27 (e) \$500,000.00 or more.

1 (2) An amount or value reported under section 4(1)(f) shall be  
2 reported by category as follows:

3 (a) \$10,000.00 or more but less than \$50,000.00.

4 (b) \$50,000.00 or more but less than \$100,000.00.

5 (c) \$100,000.00 or more but less than \$500,000.00.

6 (d) \$500,000.00 or more.

7 (3) Instead of specifying the category of the amount or value  
8 of an item in a report under this act, an individual may indicate  
9 the exact amount or value of the item or, if stock shares, the  
10 number of shares.

11 Sec. 6. A report under section 4 may omit any of the  
12 following:

13 (a) Information required to be reported under the Michigan  
14 campaign finance act, 1976 PA 388, MCL 169.201 to 169.282.

15 (b) An item otherwise required to be reported under section  
16 4(1)(e), (f), or (g) if all of the following apply:

17 (i) The item represents the sole financial interest and  
18 responsibility of a member of the immediate family of the  
19 individual filing the report about which the individual filing the  
20 report does not have actual knowledge.

21 (ii) The item is not in any way, past or present, derived from  
22 the income, assets, or activities of the individual filing the  
23 report.

24 (iii) The individual filing the report does not derive, or  
25 expect to derive, financial benefit from the item.

26 (c) An item that concerns a spouse who is living separate and  
27 apart from the individual filing the report with the intention of

1 terminating the marriage or maintaining a legal separation.

2 (d) Compensation from a publicly held corporation that has  
3 shares that are listed or traded over the counter or on an  
4 organized exchange paid to a business owned by the individual  
5 filing the report or in which the individual filing the report has  
6 an interest, if the report under section 4 includes a complete  
7 statement of the identity and value of that business and the  
8 individual filing the report is required to have a license as  
9 described in section 4(1)(h).

10 (e) Benefits received under the social security act, chapter  
11 531, 49 Stat. 620.

12 Sec. 7. The secretary of state shall do all of the following:

13 (a) Prepare and make available appropriate forms and  
14 instructions for the reports required by this act.

15 (b) Receive reports as required by this act.

16 (c) As soon as practicable, but not later than the end of the  
17 business day on which a report required to be filed under this act  
18 is received, make the report or all of the contents of the report  
19 available without charge to the public on the internet at a single  
20 website established and maintained by the secretary of state, and  
21 not later than the third business day following the day on which  
22 the report is received, make the report available for public  
23 inspection and reproduction during regular business hours.

24 (d) Promulgate rules and issue declaratory rulings to  
25 implement this act pursuant to the administrative procedures act of  
26 1969, 1969 PA 306, MCL 24.201 to 24.328. Rules may provide for the  
27 redaction of information in a report before release to the public

1 if the information may jeopardize the personal safety of a person  
2 identified in the report.

3 (e) Conduct investigations as necessary to determine whether  
4 there is reason to believe that a violation of this act occurred.  
5 Investigations shall be conducted pursuant to the administrative  
6 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

7 (f) The secretary of state, for the purposes of this act, may  
8 administer oaths; certify to official acts; and issue subpoenas to  
9 compel the attendance of witnesses and the production of papers,  
10 books, accounts, and documents pertaining to the matter. The party  
11 on whose behalf a subpoena is issued may file a petition in the  
12 circuit court for Ingham county for an order requiring compliance  
13 with the subpoena.

14 Sec. 8. (1) A citizen of this state may file a complaint with  
15 the secretary of state alleging a violation of this act. The  
16 secretary of state, upon receipt of a complaint, shall investigate  
17 the allegations as provided in section 7.

18 (2) If the secretary of state, upon investigation, determines  
19 that there is reason to believe that a violation of this act  
20 occurred, the secretary of state shall endeavor to correct the  
21 violation or prevent a further violation by using informal methods  
22 such as a conference, conciliation, or persuasion and may enter  
23 into a conciliation agreement with the person involved. Unless  
24 violated, a conciliation agreement is a complete bar to any further  
25 action with respect to matters covered in the conciliation  
26 agreement. If the secretary of state is unable to correct or  
27 prevent further violation by these informal methods, the secretary

1 of state may refer the matter to the attorney general for the  
2 enforcement of a criminal penalty provided by this act or commence  
3 a hearing as provided in subsection (3), if the attorney general is  
4 not the subject of the complaint. If the attorney general is the  
5 subject of the complaint, the secretary of state shall forward the  
6 results of the investigation to the prosecuting attorney for Ingham  
7 county for enforcement of this act.

8 (3) The secretary of state may commence a hearing to determine  
9 whether a civil violation of this act has occurred. A hearing shall  
10 not be commenced during the period beginning 30 days before an  
11 election and ending the day after that election except with the  
12 consent of the person suspected of committing a civil violation.  
13 The hearing shall be conducted in accordance with the procedures  
14 set forth in chapter 4 of the administrative procedures act of  
15 1969, 1969 PA 306, MCL 24.271 to 24.287. If, after a hearing, the  
16 secretary of state determines that a violation of this act has  
17 occurred, the secretary of state may issue an order requiring the  
18 person to pay a civil fine of not more than \$1,000.00 for each  
19 violation.

20 (4) A final decision and order issued by the secretary of  
21 state is subject to judicial review as provided by chapter 6 of the  
22 administrative procedures act of 1969, 1969 PA 306, MCL 24.301 to  
23 24.306. The secretary of state shall deposit a civil fine imposed  
24 under this section in the general fund. The secretary of state may  
25 bring an action in the Ingham county circuit court to recover the  
26 amount of a civil fine.

27 (5) When a financial statement or report is filed under this

1 act, the secretary of state shall review the report or statement  
2 and may investigate an apparent violation of this act under the  
3 rules promulgated under this act. If the secretary of state  
4 determines that there is reason to believe that a violation of this  
5 act has occurred and the procedures prescribed in subsection (2)  
6 have been complied with, the secretary of state may refer the  
7 matter to the attorney general for the enforcement of a criminal  
8 penalty provided by this act or commence a hearing under subsection  
9 (3) to determine whether a civil violation of this act has  
10 occurred.

11 (6) The attorney general or, if the attorney general is the  
12 individual who is alleged to have violated this act, the  
13 prosecuting attorney for Ingham county shall enforce this act  
14 against an individual who violates this act.

15 Sec. 9. (1) An individual who fails to file a report as  
16 required under this act shall pay a late filing fee not to exceed  
17 \$1,000.00, determined as follows:

18 (a) Twenty-five dollars for each of the first 3 business days  
19 that the report remains unfiled.

20 (b) Fifty dollars for each of the next 7 business days after  
21 the first 3 business days that the report remains unfiled.

22 (c) One hundred dollars for each business day after the first  
23 10 business days that the report remains unfiled.

24 (2) Any individual required to file a report under this act  
25 who fails to file a report by December 31 of that calendar year or  
26 knowingly files an incomplete or inaccurate report shall pay an  
27 additional late filing fee of \$5,000.00.

1 (3) Any late filing fees assessed by the secretary of state  
2 that remain unpaid for more than 180 days shall be referred to the  
3 department of treasury for collection.

4 (4) Upon receipt of a written request and the required filing,  
5 the secretary of state may waive payment of a late filing fee if  
6 the request for the waiver is based on good cause not stemming from  
7 negligence and accompanied by adequate documentation.

8 (5) If an individual required to file a report under this act  
9 fails to file 2 reports and if both of the reports remain unfiled  
10 for more than 30 days, the individual is guilty of a misdemeanor  
11 punishable by imprisonment for not more than 1 year or a fine of  
12 not more than \$2,000.00, or both.

13 (6) If an individual required to file a report under this act  
14 fails to file 3 or more reports and if the reports remain unfiled  
15 for more than 30 days past the yearly May 1 deadline, the  
16 individual is guilty of a felony punishable by imprisonment for not  
17 more than 4 years or a fine of not more than \$10,000.00, or both.

18 (7) A default in the payment of a fee due or ordered under  
19 this act, or an installment of the fee, may be remedied by any  
20 means available under the revised judicature act of 1961, 1961 PA  
21 236, MCL 600.101 to 600.9947.

22 (8) This act does not create a legal or equitable private  
23 cause of action. The remedies provided in this act are the  
24 exclusive means to enforce this act and to redress any harm  
25 resulting from a violation of this act.

26 Enacting section 1. This act takes effect May 2, 2010.