

HOUSE BILL NO. 4062

January 28, 2021, Introduced by Reps. Sowerby, LaGrand, Hammoud, Camilleri, Aiyash, Brixie, Sabo, Hertel, Hope, Cambensy, Sneller, Manoogian, Pohutsky, Brenda Carter, Stone, Ellison, Rabhi and Cherry and referred to the Committee on Elections and Ethics.

A bill to regulate political activity; to require certain elected state officers and candidates for state elective office to file financial reports; to prescribe the powers and duties of certain state 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 "executive branch financial disclosure act".

3 Sec. 2. As used in this act:

1 (a) "Beneficial interest" includes, but is not limited to, the
2 interest in a trust of a qualified trust beneficiary or a trust
3 beneficiary as those terms are defined in section 7103 of the
4 estates and protected individuals code, 1998 PA 386, MCL 700.7103.

5 (b) "Blind trust" means a qualified blind trust or qualified
6 diversified trust as those terms are defined in 5 CFR 2634.403.

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

9 (d) "Candidate for state office" means a candidate for any of
10 the following offices:

11 (i) Governor.

12 (ii) Lieutenant governor.

13 (iii) Secretary of state.

14 (iv) Attorney general.

15 (e) "Earned income" means salaries, tips, or other
16 compensation, and net earnings from self-employment for the taxable
17 year.

18 (f) "Immediate family of an individual", except as otherwise
19 provided in this act, means a spouse or dependent child of that
20 individual or a person claimed by that individual or that
21 individual's spouse as a dependent for federal income tax purposes.

22 (g) "Income" means money or any thing of value received, or to
23 be received as a claim on future services, whether in the form of a
24 fee, salary, expense, allowance, forbearance, forgiveness,
25 interest, dividend, royalty, rent, capital gain, or any other form
26 of recompense that is considered income under the internal revenue
27 code of 1986, 26 USC 1 to 9834.

28 (h) "State official" means the holder of an office described
29 in subdivision (d) whose current term began after the effective

1 date of this act.

2 Sec. 3. (1) If an individual is a state official at any time
3 during a calendar year, that individual shall electronically file
4 with the secretary of state by May 15 of the following year a
5 report that meets the requirements of section 4. This subsection
6 does not apply to an individual who was a state official only on
7 the first day of the calendar year.

8 (2) If an individual is a candidate for state office and has
9 not already filed a report under subsection (1) covering the
10 preceding calendar year, that individual shall file with the
11 secretary of state a report that meets the requirements of section
12 4 within 30 days after the later of May 15 or the date on which the
13 individual forms a candidate committee as a candidate for state
14 office under section 21 of the Michigan campaign finance act, 1976
15 PA 388, MCL 169.221. However, the individual is not required to
16 file a report under this section if, under any of the following
17 acts, the individual files a report in the current calendar year:

- 18 (a) State senator financial disclosure act.
- 19 (b) University board member financial disclosure act.
- 20 (c) State board of education financial disclosure act.
- 21 (d) State representative financial disclosure act.
- 22 (e) Judicial branch financial disclosure act.

23 (3) In addition to the report required under subsection (1), a
24 candidate for state office shall file with the secretary of state
25 by June 15 of the year in which the election for the office will be
26 held a copy of the individual's federal tax returns for the 3
27 preceding calendar years. A Social Security number on a tax return
28 filed under this subsection may be redacted.

29 (4) If an individual required to file a report under this act

1 receives notice from the secretary of state under section 6(1)(g),
2 the individual shall, within 9 business days after receiving the
3 notice, file corrections to the errors or omissions or file the
4 report, as applicable.

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

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

10 (b) The name of each member of the immediate family of the
11 individual filing the report who is not a dependent child and the
12 number of members of the immediate family of the individual filing
13 the report who are dependent children.

14 (c) The name, address, and principal activity of each employer
15 of the individual and of each member of the immediate family of the
16 individual filing the report during the calendar year covered by
17 the report if the individual's or member's total earned income from
18 the employer equals \$5,000.00 or more during that calendar year.

19 (d) Both of the following, as applicable:

20 (i) The source and type of earned income received during the
21 preceding calendar year by the individual filing the report if the
22 total earned income from that source equals \$5,000.00 or more
23 during that calendar year.

24 (ii) The source and type of earned income received during the
25 preceding calendar year by each member of the immediate family of
26 the individual filing the report if the total earned income from
27 that source equals \$5,000.00 or more during that calendar year.

28 (e) The source and type of all other income not reported under
29 subdivision (d) that is received during the preceding calendar year

1 by the individual filing the report or a member of the immediate
2 family of that individual if the total income from that source
3 equals \$5,000.00 or more during that calendar year.

4 (f) Excluding a primary residence, the address of each parcel
5 of real property held during the preceding calendar year by the
6 individual filing the report or a member of the immediate family of
7 that individual if the real property had a fair market value of
8 \$50,000.00 or more at any time the real property was held during
9 the preceding calendar year. An individual filing a report may
10 exclude the street number of a parcel of real property listed under
11 this subdivision.

12 (g) A description of any stocks, bonds, commodities, futures,
13 shares in mutual funds, or other forms of securities held by the
14 individual filing the report or a member of the immediate family of
15 that individual during the preceding calendar year, if the security
16 has a total aggregate fair market value of \$10,000.00 or more on
17 the date the report is filed.

18 (h) A description of any interest in any of the following
19 types of assets held by the individual filing the report or a
20 member of the immediate family of that individual, if the interest
21 in the asset has a value of \$10,000.00 or more on the date the
22 report is filed:

23 (i) A qualified or nonqualified annuity.

24 (ii) A benefit under a qualified or nonqualified plan of
25 deferred compensation.

26 (iii) An account in, or benefit payable under, any pension,
27 profit-sharing, stock bonus, or other qualified retirement plan.

28 (iv) An individual retirement account or trust.

29 (v) A benefit under a plan or arrangement that is established

1 under section 401, 403, 408, 408A, or 457 of the internal revenue
2 code of 1986, 26 USC 401, 403, 408, 408A, and 457, or a similar
3 provision of the internal revenue code of 1986, 26 USC 1 to 9834.

4 (i) The identity of all compensated positions held by the
5 individual filing the report or a member of the immediate family of
6 that individual during the preceding calendar year as an officer,
7 director, member, trustee, partner, proprietor, representative,
8 employee, or consultant of a corporation, limited liability
9 company, limited partnership, partnership, or other business
10 enterprise; of a nonprofit organization; of a labor organization;
11 or of an educational or other institution other than this state, if
12 the total compensation received from a position equals \$1,000.00 or
13 more during that calendar year. A position reported under this
14 subdivision must include the title of the position, the name of the
15 entity within which the position exists, and the principal activity
16 of the entity.

17 (j) If the individual filing the report or a member of the
18 immediate family of that individual was required during the
19 previous calendar year to register as a lobbyist or lobbyist agent
20 under section 7 of 1978 PA 472, MCL 4.417, the name, address, and
21 principal activity of all persons who gave compensation to or
22 reimbursed the individual or immediate family member for lobbying.
23 As used in this subdivision, "immediate family" includes the child
24 of an individual, whether dependent or not, parent of an
25 individual, and spouse of a child of an individual.

26 (k) A description of any interest the individual filing the
27 report or a member of the immediate family of that individual had
28 during the preceding calendar year in a legal entity that conducts
29 business in this state, if the interest has a book value of

1 \$10,000.00 or more, unless the entity has shares that are listed or
2 traded over the counter or on an organized exchange.

3 (2) Subject to subsection (4), information an individual is
4 required to report under this section includes information with
5 respect to the income from a trust or other financial arrangement
6 from which income is received by, or with respect to which a
7 beneficial interest in principal or income is held by, an
8 individual required to file a report under this section or a member
9 of the immediate family of that individual.

10 (3) An individual is not required to disclose the value of any
11 real or personal property disclosed under subsection (1).

12 (4) If an individual required to file a report under section 3
13 or an immediate family member of the individual holds a beneficial
14 interest in a blind trust, the individual is not required to
15 include the interests or assets of the blind trust in his or her
16 statement under subsection (1). However, the individual must
17 indicate in his or her report that the individual or the immediate
18 family member of the individual holds a beneficial interest in a
19 blind trust.

20 Sec. 5. An individual filing a report under section 3 may omit
21 any of the following:

22 (a) Information an individual is required to report under the
23 Michigan campaign finance act, 1976 PA 388, MCL 169.201 to 169.282.

24 (b) An item otherwise required to be reported under section
25 4(1)(f) or (g) if all of the following apply:

26 (i) The item represents the exclusive financial interest and
27 responsibility of a member of the immediate family of the
28 individual filing the report about which the individual filing the
29 report does not have actual knowledge.

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

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

6 (c) An item that concerns a spouse who is living separate and
7 apart from the individual filing the report with the intention of
8 terminating the marriage or maintaining a legal separation.

9 (d) An item that concerns income of the individual filing the
10 report or a member of the immediate family of that individual
11 arising from dissolution of the individual's or member's marriage
12 or a permanent legal separation from the individual's or member's
13 spouse.

14 (e) Compensation from a publicly held corporation that has
15 shares that are listed or traded over the counter or on an
16 organized exchange paid to a business owned by the individual
17 filing the report or in which the individual filing the report has
18 an interest, if the report under section 4 includes a complete
19 statement of the identity and value of that business.

20 (f) Benefits received under the social security act, chapter
21 531, 49 Stat 620.

22 Sec. 6. (1) The secretary of state shall do all of the
23 following:

24 (a) Make available through his or her offices appropriate
25 forms, instructions, and manuals required by this act.

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

29 (c) Prepare forms, instructions, and manuals required under

1 this act.

2 (d) Promulgate rules and issue declaratory rulings to
3 implement this act pursuant to the administrative procedures act of
4 1969, 1969 PA 306, MCL 24.201 to 24.328.

5 (e) Upon receiving a written request and the required filing,
6 waive payment of a late filing fee if the request for the waiver is
7 based on good cause and accompanied by adequate documentation. One
8 or more of the following reasons constitute good cause for a late
9 filing fee waiver:

10 (i) The incapacitating physical illness, hospitalization,
11 accident involvement, death, or incapacitation for medical reasons
12 of an individual required to file a report, an individual whose
13 participation is essential to the preparation of the report, or a
14 member of the immediate family of 1 of these individuals.

15 (ii) Other unique, unintentional factors beyond the
16 individual's control that are not the result of a negligent act or
17 nonaction so that a reasonably prudent person would excuse the
18 filing on a temporary basis. These factors include the loss or
19 unavailability of records because of a fire, flood, theft, or
20 similar reason and difficulties related to the transmission of the
21 filing to the secretary of state, such as exceptionally bad
22 weather.

23 (f) As soon as practicable, but not later than 5 business days
24 after a report required to be filed under this act is received,
25 make the report or all of the contents of the report available
26 without charge to the public on the internet at a single website.

27 (g) Within 9 business days after the deadline for filing a
28 report under this act, notify, by registered mail, an individual of
29 any error or omission in the individual's report or that the

1 individual failed to file the required report.

2 (2) The secretary of state shall issue a declaratory ruling
3 under this section only if the person requesting the ruling has
4 provided a reasonably complete statement of facts necessary for the
5 ruling or if the person requesting the ruling has, with the
6 permission of the secretary of state, supplied supplemental facts
7 necessary for the ruling. Within 2 days after receiving a request
8 for a declaratory ruling, the secretary of state shall make the
9 request available in the manner provided for under subsection
10 (1)(f). An interested person may submit written comments regarding
11 the request to the secretary of state within 10 business days after
12 the date the request is made available to the public. Within 45
13 business days after receiving a declaratory ruling request, the
14 secretary of state shall make a proposed response available in the
15 manner provided for under subsection (1)(f). An interested person
16 may submit written comments regarding the proposed response to the
17 secretary of state within 5 business days after the date the
18 proposal is made available to the public. Except as otherwise
19 provided in this section, the secretary of state shall issue a
20 declaratory ruling within 60 business days after receiving a
21 request for a declaratory ruling. If the secretary of state refuses
22 to issue a declaratory ruling, the secretary of state shall notify
23 the person making the request of the reasons for the refusal and
24 issue an interpretative statement providing an informational
25 response to the question presented within the 60-day period. A
26 declaratory ruling or interpretative statement issued under this
27 section must not state a general rule of law, other than that which
28 is stated in this act, until the general rule of law is promulgated
29 by the secretary of state as a rule pursuant to the administrative

1 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, or under
2 judicial order.

3 (3) Under extenuating circumstances, the secretary of state
4 may issue a notice extending, for not more than 30 business days,
5 the period during which the secretary of state shall respond to a
6 request for a declaratory ruling. The secretary of state shall not
7 issue more than 1 notice of extension for a particular request. A
8 person requesting a declaratory ruling may waive, in writing, the
9 time limitations provided by this section.

10 (4) The secretary of state shall make available to the public
11 an annual summary of the declaratory rulings and interpretative
12 statements issued by the secretary of state under this section.

13 (5) A person may file with the secretary of state a complaint
14 that alleges a violation of this act. Within 5 business days after
15 a complaint that meets the requirements of subsection (6) is filed,
16 the secretary of state shall mail notice to the person against whom
17 the complaint is filed. The notice must include a copy of the
18 complaint. Within 15 business days after the notice is mailed, the
19 person against whom the complaint was filed may submit a response
20 to the secretary of state. The secretary of state may extend the
21 period for submitting a response an additional 15 business days for
22 good cause. The secretary of state shall mail a copy of a response
23 received to the complainant. Within 10 business days after the
24 response is mailed, the complainant may submit a rebuttal statement
25 to the secretary of state. The secretary of state may extend the
26 period for submitting a rebuttal statement an additional 10
27 business days for good cause. The secretary of state shall provide
28 a copy of the rebuttal statement to the person against whom the
29 complaint was filed.

1 (6) A complaint filed under subsection (5) must satisfy all of
2 the following requirements:

3 (a) Be signed by the complainant.

4 (b) State the name, address, and telephone number of the
5 complainant.

6 (c) Include the complainant's certification that, to the best
7 of the complainant's knowledge, information, and belief, formed
8 after a reasonable inquiry under the circumstances, each factual
9 contention of the complaint is supported by evidence. However, if,
10 after a reasonable inquiry under the circumstances, the complainant
11 is unable to certify that certain factual contentions are supported
12 by evidence, the complainant may certify that, to the best of his
13 or her knowledge, information, or belief, there are grounds to
14 conclude that those specifically identified factual contentions are
15 likely to be supported by evidence after a reasonable opportunity
16 for further inquiry.

17 (7) A person shall not file a complaint with a false
18 certificate under subsection (6)(c). A person may file a complaint
19 under subsection (5) alleging that another person has filed a
20 complaint with a false certificate under subsection (6)(c).

21 (8) The secretary of state shall investigate allegations
22 brought under this act pursuant to the rules promulgated under this
23 act. If an allegation involves the secretary of state, or a member
24 of the immediate family of the secretary of state, the secretary of
25 state shall refer the matter to the attorney general to determine
26 whether a violation of this act occurred.

27 (9) No later than 45 business days after receiving a rebuttal
28 statement submitted under subsection (5) or, if no response or
29 rebuttal is received under subsection (5), 45 business days after

1 receiving a complaint under subsection (5), the secretary of state
2 shall post on the secretary of state's website whether there may be
3 reason to believe that a violation of this act occurred. If the
4 secretary of state determines whether there may be reason to
5 believe that a violation of this act occurred or determines to
6 terminate its proceedings, the secretary of state shall, within 30
7 days after that determination, post on the secretary of state's
8 website any complaint, response, or rebuttal statement received
9 under subsection (5) regarding that violation or alleged violation
10 and any correspondence that is dispositive of that violation or
11 alleged violation between the secretary of state and the
12 complainant or the person against whom the complaint was filed. If
13 the secretary of state determines that there may be reason to
14 believe that a violation of this act occurred, the secretary of
15 state shall endeavor to correct the violation or prevent a further
16 violation by using informal methods such as a conference,
17 conciliation, or persuasion, and may enter into a conciliation
18 agreement with the person involved. Unless violated, a conciliation
19 agreement is a complete bar to any further civil action with
20 respect to matters covered in the conciliation agreement. The
21 secretary of state shall, within 30 days after a conciliation
22 agreement is signed, post that agreement on the secretary of
23 state's website. If, after 90 business days, the secretary of state
24 is unable to correct or prevent further violation by these informal
25 methods, the secretary of state shall commence a hearing as
26 provided in subsection (10) for enforcement of this act.

27 (10) The secretary of state may commence a hearing to
28 determine whether a violation of this act occurred. The hearing
29 must be conducted pursuant to chapter 4 of the administrative

1 procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288.

2 (11) A final decision or order issued by the secretary of
3 state under this act is subject to judicial review as provided by
4 chapter 6 of the administrative procedures act of 1969, 1969 PA
5 306, MCL 24.301 to 24.306. The secretary of state shall deposit a
6 civil fine imposed under this act in the general fund. The
7 secretary of state may bring an action in circuit court to recover
8 the amount of a civil fine.

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

17 (13) In addition to any other sanction provided for by this
18 act, the secretary of state may require a person who violates
19 subsection (7) to do either or both of the following:

20 (a) Pay to the secretary of state some or all of the expenses
21 incurred by the secretary of state as a direct result of the
22 violation.

23 (b) Pay to the person against whom the complaint was filed
24 some or all of the expenses, including, but not limited to,
25 reasonable attorney fees incurred by that person in proceedings
26 under this act as a direct result of the violation.

27 (14) There is no private right of action, either in law or in
28 equity, under this act. The remedies provided in this act are the
29 exclusive means by which this act may be enforced and by which any

1 harm resulting from a violation of this act may be redressed.

2 Sec. 7. (1) The secretary of state shall provide a copy of a
3 report, or part of a report, required to be filed under this act at
4 a reasonable charge.

5 (2) A report that is made available to the public under this
6 act must not be used for any commercial purpose.

7 (3) The secretary of state shall preserve a report filed under
8 this act for 15 years after the date the report is filed. If the
9 secretary of state or attorney general determines under section 6
10 that a violation of this act occurred, the secretary of state shall
11 preserve all complaints, orders, decisions, or other documents
12 related to that violation for 15 years after the date of the
13 determination or the date the violation is corrected, whichever is
14 later. Reports filed under this act may be reproduced pursuant to
15 the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406.
16 After the required preservation period, the reports, or the
17 reproductions of the reports, may be disposed of in the manner
18 prescribed in the management and budget act, 1984 PA 431, MCL
19 18.1101 to 18.1594, and section 11 of the Michigan history center
20 act, 2016 PA 470, MCL 399.811.

21 (4) The secretary of state shall not collect a charge for the
22 filing of a report under this act, except a late filing fee
23 required by this act.

24 (5) The secretary of state shall determine whether a statement
25 or report filed under this act complies, on its face, with the
26 requirements of this act and the rules promulgated under this act.
27 The secretary of state shall determine whether a statement or
28 report that is required to be filed under this act is in fact
29 filed.

1 (6) A report required to be filed under this act must be filed
2 not later than 5 p.m. of the day it is required to be filed.

3 Sec. 8. (1) An individual who fails to file a report as
4 required under this act shall pay a late filing fee determined as
5 follows:

6 (a) Twenty-five dollars for each of the first 10 business days
7 that the report remains unfiled.

8 (b) Fifty dollars for each business day after the first 10
9 business days that the report remains unfiled.

10 (c) In addition to the late filing fees imposed under
11 subdivisions (a) and (b), \$5,000.00 if the report remains unfiled
12 for more than 105 business days.

13 (2) If an individual required to file a report under this act
14 knowingly files an incomplete or inaccurate report, the individual
15 shall be ordered to pay a civil fine of not more than \$10,000.00.

16 (3) A late filing fee collected under this act must be
17 deposited into the state official financial disclosure fund created
18 in section 9 of the state representative financial disclosure act.
19 A late filing fee assessed under this act that remains unpaid for
20 more than 180 days must be referred to the department of treasury
21 for collection.