

HOUSE BILL NO. 4612

April 13, 2021, Introduced by Reps. Filler and Huizenga and referred to the Committee on Elections and Ethics.

A bill to regulate political activity; to require state senators to file financial reports; to prescribe the powers and duties of certain state officers and agencies; to require the promulgation of rules; 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 "state
2 senator 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) "Earned income" means salaries, tips, or other
8 compensation, and net earnings from self-employment for the taxable
9 year.

10 (d) "Immediate family of an individual", except as otherwise
11 provided in this act, means a spouse or dependent child of that
12 individual or a person claimed by that individual or that
13 individual's spouse as a dependent for federal income tax purposes.

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

20 (f) "State official" means a state senator whose current term
21 began after the effective date of this act.

22 Sec. 3. (1) If an individual is a state official at any time
23 during a calendar year, that individual shall electronically file
24 with the secretary of state by May 15 of the following year a
25 report that meets the requirements of section 4. This subsection
26 does not apply to an individual who was a state official only on
27 the first day of the calendar year or who, under any of the
28 following acts, files a report in the current calendar year:

29 (a) University board member financial disclosure act.

1 (b) State board of education financial disclosure act.

2 (c) State representative financial disclosure act.

3 (d) Judicial branch financial disclosure act.

4 (e) Executive branch financial disclosure act.

5 (2) If an individual required to file a report under this act
6 receives notice from the secretary of state under section 6(1)(g),
7 the individual shall, within 9 business days after receiving the
8 notice, file corrections to the errors or omissions or file the
9 report, as applicable.

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

13 (a) The full name, mailing address, and occupation of the
14 individual filing the report.

15 (b) The name of each member of the immediate family of the
16 individual filing the report who is not a dependent child and the
17 number of members of the immediate family of the individual filing
18 the report who are dependent children.

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

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

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

29 (ii) The source and type of earned income received during the

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

4 (e) The source and type of all other income not reported under
5 subdivision (d) that is received during the preceding calendar year
6 by the individual filing the report or a member of the immediate
7 family of that individual if the total income from that source
8 equals \$5,000.00 or more during that calendar year.

9 (f) Excluding a primary residence, the address of each parcel
10 of real property held during the preceding calendar year by the
11 individual filing the report or a member of the immediate family of
12 that individual if the real property had a fair market value of
13 \$50,000.00 or more at any time the real property was held during
14 the preceding calendar year. An individual filing a report may
15 exclude the street number of a parcel of real property listed under
16 this subdivision.

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

23 (h) A description of any interest in any of the following
24 types of assets held by the individual filing the report or a
25 member of the immediate family of that individual, if the interest
26 in the asset has a value of \$10,000.00 or more on the date the
27 report is filed:

28 (i) A qualified or nonqualified annuity.

29 (ii) A benefit under a qualified or nonqualified plan of

1 deferred compensation.

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

4 (iv) An individual retirement account or trust.

5 (v) A benefit under a plan or arrangement that is established
6 under section 401, 403, 408, 408A, or 457 of the internal revenue
7 code of 1986, 26 USC 401, 403, 408, 408A, and 457, or a similar
8 provision of the internal revenue code of 1986, 26 USC 1 to 9834.

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

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

1 individual, and spouse of a child of an individual.

2 (k) A description of any interest the individual filing the
3 report or a member of the immediate family of that individual had
4 during the preceding calendar year in a legal entity that conducts
5 business in this state, if the interest has a book value of
6 \$10,000.00 or more, unless the entity has shares that are listed or
7 traded over the counter or on an organized exchange.

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

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

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

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

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

29 (b) An item otherwise required to be reported under section

1 4(1)(f) or (g) if all of the following apply:

2 (i) The item represents the exclusive financial interest and
3 responsibility of a member of the immediate family of the
4 individual filing the report about which the individual filing the
5 report does not have actual knowledge.

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

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

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

14 (d) An item that concerns income of the individual filing the
15 report or a member of the immediate family of that individual
16 arising from dissolution of the individual's or member's marriage
17 or a permanent legal separation from the individual's or member's
18 spouse.

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

25 (f) Benefits received under the social security act, chapter
26 531, 49 Stat 620.

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

29 (a) Make available through his or her offices appropriate

1 forms, instructions, and manuals required by this act.

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

5 (c) Prepare forms, instructions, and manuals required under
6 this act.

7 (d) Promulgate rules and issue declaratory rulings to
8 implement this act pursuant to the administrative procedures act of
9 1969, 1969 PA 306, MCL 24.201 to 24.328.

10 (e) Upon receiving a written request and the required filing,
11 waive payment of a late filing fee if the request for the waiver is
12 based on good cause and accompanied by adequate documentation. One
13 or more of the following reasons constitute good cause for a late
14 filing fee waiver:

15 (i) The incapacitating physical illness, hospitalization,
16 accident involvement, death, or incapacitation for medical reasons
17 of an individual required to file a report, an individual whose
18 participation is essential to the preparation of the report, or a
19 member of the immediate family of 1 of these individuals.

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

28 (f) As soon as practicable, but not later than 5 business days
29 after a report required to be filed under this act is received,

1 make the report or all of the contents of the report available
2 without charge to the public on the internet at a single website.

3 (g) Within 9 business days after the deadline for filing a
4 report under this act, notify, by registered mail, an individual of
5 any error or omission in the individual's report or that the
6 individual failed to file the required report.

7 (2) The secretary of state shall issue a declaratory ruling
8 under this section only if the person requesting the ruling has
9 provided a reasonably complete statement of facts necessary for the
10 ruling or if the person requesting the ruling has, with the
11 permission of the secretary of state, supplied supplemental facts
12 necessary for the ruling. Within 2 days after receiving a request
13 for a declaratory ruling, the secretary of state shall make the
14 request available in the manner provided for under subsection
15 (1)(f). An interested person may submit written comments regarding
16 the request to the secretary of state within 10 business days after
17 the date the request is made available to the public. Within 45
18 business days after receiving a declaratory ruling request, the
19 secretary of state shall make a proposed response available in the
20 manner provided for under subsection (1)(f). An interested person
21 may submit written comments regarding the proposed response to the
22 secretary of state within 5 business days after the date the
23 proposal is made available to the public. Except as otherwise
24 provided in this section, the secretary of state shall issue a
25 declaratory ruling within 60 business days after receiving a
26 request for a declaratory ruling. If the secretary of state refuses
27 to issue a declaratory ruling, the secretary of state shall notify
28 the person making the request of the reasons for the refusal and
29 issue an interpretative statement providing an informational

1 response to the question presented within the 60-day period. A
2 declaratory ruling or interpretative statement issued under this
3 section must not state a general rule of law, other than that which
4 is stated in this act, until the general rule of law is promulgated
5 by the secretary of state as a rule pursuant to the administrative
6 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, or under
7 judicial order.

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

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

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

1 to the secretary of state. The secretary of state may extend the
2 period for submitting a rebuttal statement an additional 10
3 business days for good cause. The secretary of state shall provide
4 a copy of the rebuttal statement to the person against whom the
5 complaint was filed.

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

8 (a) Be signed by the complainant.

9 (b) State the name, address, and telephone number of the
10 complainant.

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

22 (7) A person shall not file a complaint with a false
23 certificate under subsection (6)(c). A person may file a complaint
24 under subsection (5) alleging that another person has filed a
25 complaint with a false certificate under subsection (6)(c).

26 (8) The secretary of state shall investigate allegations
27 brought under this act pursuant to the rules promulgated under this
28 act. If an allegation involves the secretary of state, or a member
29 of the immediate family of the secretary of state, the secretary of

1 state shall refer the matter to the attorney general to determine
2 whether a violation of this act occurred.

3 (9) No later than 45 business days after receiving a rebuttal
4 statement submitted under subsection (5) or, if no response or
5 rebuttal is received under subsection (5), 45 business days after
6 receiving a complaint under subsection (5), the secretary of state
7 shall post on the secretary of state's website whether there may be
8 reason to believe that a violation of this act occurred. If the
9 secretary of state determines whether there may be reason to
10 believe that a violation of this act occurred or determines to
11 terminate its proceedings, the secretary of state shall, within 30
12 days after that determination, post on the secretary of state's
13 website any complaint, response, or rebuttal statement received
14 under subsection (5) regarding that violation or alleged violation
15 and any correspondence that is dispositive of that violation or
16 alleged violation between the secretary of state and the
17 complainant or the person against whom the complaint was filed. If
18 the secretary of state determines that there may be reason to
19 believe that a violation of this act occurred, the secretary of
20 state shall endeavor to correct the violation or prevent a further
21 violation by using informal methods such as a conference,
22 conciliation, or persuasion, and may enter into a conciliation
23 agreement with the person involved. Unless violated, a conciliation
24 agreement is a complete bar to any further civil action with
25 respect to matters covered in the conciliation agreement. The
26 secretary of state shall, within 30 days after a conciliation
27 agreement is signed, post that agreement on the secretary of
28 state's website. If, after 90 business days, the secretary of state
29 is unable to correct or prevent further violation by these informal

1 methods, the secretary of state shall commence a hearing as
2 provided in subsection (10) for enforcement of this act.

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

7 (11) A final decision or order issued by the secretary of
8 state under this act is subject to judicial review as provided by
9 chapter 6 of the administrative procedures act of 1969, 1969 PA
10 306, MCL 24.301 to 24.306. The secretary of state shall deposit a
11 civil fine imposed under this act in the general fund. The
12 secretary of state may bring an action in circuit court to recover
13 the amount of a civil fine.

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

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

25 (a) Pay to the secretary of state some or all of the expenses
26 incurred by the secretary of state as a direct result of the
27 violation.

28 (b) Pay to the person against whom the complaint was filed
29 some or all of the expenses, including, but not limited to,

1 reasonable attorney fees incurred by that person in proceedings
2 under this act as a direct result of the violation.

3 (14) There is no private right of action, either in law or in
4 equity, under this act. The remedies provided in this act are the
5 exclusive means by which this act may be enforced and by which any
6 harm resulting from a violation of this act may be redressed.

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

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

12 (3) The secretary of state shall preserve a report filed under
13 this act for 15 years after the date the report is filed. If the
14 secretary of state or attorney general determines under section 6
15 that a violation of this act occurred, the secretary of state shall
16 preserve all complaints, orders, decisions, or other documents
17 related to that violation for 15 years after the date of the
18 determination or the date the violation is corrected, whichever is
19 later. Reports filed under this act may be reproduced pursuant to
20 the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406.
21 After the required preservation period, the reports, or the
22 reproductions of the reports, may be disposed of in the manner
23 prescribed in the management and budget act, 1984 PA 431, MCL
24 18.1101 to 18.1594, and section 11 of the Michigan history center
25 act, 2016 PA 470, MCL 399.811.

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

29 (5) The secretary of state shall determine whether a statement

1 or report filed under this act complies, on its face, with the
2 requirements of this act and the rules promulgated under this act.
3 The secretary of state shall determine whether a statement or
4 report that is required to be filed under this act is in fact
5 filed.

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

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

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

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

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

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

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

27 Enacting section 1. This act takes effect May 1, 2022.