

HOUSE BILL NO. 4615

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

A bill to regulate political activity; to require members of and candidates for the governing boards of certain state universities 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 "university board member financial disclosure act".

1 Sec. 2. As used in this act:

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

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

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

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

12 (i) Regent of the University of Michigan.

13 (ii) Member of the board of trustees of Michigan State
14 University.

15 (iii) Member of the board of governors of Wayne State
16 University.

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

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

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

1 (h) "State official" means the holder of an office described
2 in subdivision (d) whose current term began after the effective
3 date of this act.

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

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

20 (a) State senator financial disclosure act.

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

22 (c) State representative financial disclosure act.

23 (d) Executive branch financial disclosure act.

24 (e) Judicial branch financial disclosure act.

25 (3) If an individual required to file a report under this act
26 receives notice from the secretary of state under section 6(1)(g),
27 the individual shall, within 9 business days after receiving the
28 notice, file corrections to the errors or omissions or file the
29 report, as applicable.

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

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

6 (b) The name of each member of the immediate family of the
7 individual filing the report who is not a dependent child and the
8 number of members of the immediate family of the individual filing
9 the report who are dependent children.

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

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

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

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

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

29 (f) Excluding a primary residence, the address of each parcel

1 of real property held during the preceding calendar year by the
2 individual filing the report or a member of the immediate family of
3 that individual if the real property had a fair market value of
4 \$50,000.00 or more at any time the real property was held during
5 the preceding calendar year. An individual filing a report may
6 exclude the street number of a parcel of real property listed under
7 this subdivision.

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

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

19 (i) A qualified or nonqualified annuity.

20 (ii) A benefit under a qualified or nonqualified plan of
21 deferred compensation.

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

24 (iv) An individual retirement account or trust.

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

29 (i) The identity of all compensated positions held by the

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

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

22 (k) A description of any interest the individual filing the
23 report or a member of the immediate family of that individual had
24 during the preceding calendar year in a legal entity that conducts
25 business in this state, if the interest has a book value of
26 \$10,000.00 or more, unless the entity has shares that are listed or
27 traded over the counter or on an organized exchange.

28 (2) Subject to subsection (4), information an individual is
29 required to report under this section includes information with

1 respect to the income from a trust or other financial arrangement
2 from which income is received by, or with respect to which a
3 beneficial interest in principal or income is held by, an
4 individual required to file a report under this section or a member
5 of the immediate family of that individual.

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

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

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

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

20 (b) An item otherwise required to be reported under section
21 4(1)(f) or (g) if all of the following apply:

22 (i) The item represents the exclusive financial interest and
23 responsibility of a member of the immediate family of the
24 individual filing the report about which the individual filing the
25 report does not have actual knowledge.

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

29 (iii) The individual filing the report does not derive, or

1 expect to derive, financial benefit from the item.

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

5 (d) An item that concerns income of the individual filing the
6 report or a member of the immediate family of that individual
7 arising from dissolution of the individual's or member's marriage
8 or a permanent legal separation from the individual's or member's
9 spouse.

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

16 (f) Benefits received under the social security act, chapter
17 531, 49 Stat 620.

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

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

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

25 (c) Prepare forms, instructions, and manuals required under
26 this act.

27 (d) Promulgate rules and issue declaratory rulings to
28 implement this act pursuant to the administrative procedures act of
29 1969, 1969 PA 306, MCL 24.201 to 24.328.

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

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

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

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

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

27 (2) The secretary of state shall issue a declaratory ruling
28 under this section only if the person requesting the ruling has
29 provided a reasonably complete statement of facts necessary for the

1 ruling or if the person requesting the ruling has, with the
2 permission of the secretary of state, supplied supplemental facts
3 necessary for the ruling. Within 2 days after receiving a request
4 for a declaratory ruling, the secretary of state shall make the
5 request available in the manner provided for under subsection
6 (1)(f). An interested person may submit written comments regarding
7 the request to the secretary of state within 10 business days after
8 the date the request is made available to the public. Within 45
9 business days after receiving a declaratory ruling request, the
10 secretary of state shall make a proposed response available in the
11 manner provided for under subsection (1)(f). An interested person
12 may submit written comments regarding the proposed response to the
13 secretary of state within 5 business days after the date the
14 proposal is made available to the public. Except as otherwise
15 provided in this section, the secretary of state shall issue a
16 declaratory ruling within 60 business days after receiving a
17 request for a declaratory ruling. If the secretary of state refuses
18 to issue a declaratory ruling, the secretary of state shall notify
19 the person making the request of the reasons for the refusal and
20 issue an interpretative statement providing an informational
21 response to the question presented within the 60-day period. A
22 declaratory ruling or interpretative statement issued under this
23 section must not state a general rule of law, other than that which
24 is stated in this act, until the general rule of law is promulgated
25 by the secretary of state as a rule pursuant to the administrative
26 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, or under
27 judicial order.

28 (3) Under extenuating circumstances, the secretary of state
29 may issue a notice extending, for not more than 30 business days,

1 the period during which the secretary of state shall respond to a
2 request for a declaratory ruling. The secretary of state shall not
3 issue more than 1 notice of extension for a particular request. A
4 person requesting a declaratory ruling may waive, in writing, the
5 time limitations provided by this section.

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

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

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

28 (a) Be signed by the complainant.

29 (b) State the name, address, and telephone number of the

1 complainant.

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

13 (7) A person shall not file a complaint with a false
14 certificate under subsection (6)(c). A person may file a complaint
15 under subsection (5) alleging that another person has filed a
16 complaint with a false certificate under subsection (6)(c).

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

23 (9) No later than 45 business days after receiving a rebuttal
24 statement submitted under subsection (5) or, if no response or
25 rebuttal is received under subsection (5), 45 business days after
26 receiving a complaint under subsection (5), the secretary of state
27 shall post on the secretary of state's website whether there may be
28 reason to believe that a violation of this act occurred. If the
29 secretary of state determines whether there may be reason to

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

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

27 (11) A final decision or order issued by the secretary of
28 state under this act is subject to judicial review as provided by
29 chapter 6 of the administrative procedures act of 1969, 1969 PA

1 306, MCL 24.301 to 24.306. The secretary of state shall deposit a
2 civil fine imposed under this act in the general fund. The
3 secretary of state may bring an action in circuit court to recover
4 the amount of a civil fine.

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

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

16 (a) Pay to the secretary of state some or all of the expenses
17 incurred by the secretary of state as a direct result of the
18 violation.

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

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

27 Sec. 7. (1) The secretary of state shall provide a copy of a
28 report, or part of a report, required to be file under this act at
29 a reasonable charge.

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

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

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

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

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

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

1 follows:

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

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

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

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

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

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