

HOUSE BILL NO. 4090

February 03, 2021, Introduced by Reps. Yancey and LaGrand and referred to the Committee on Elections and Ethics.

A bill to regulate political activity; to require certain elected state supreme court justices and judges and candidates for state elective judicial 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 "judicial branch 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 judicial office" means a candidate for
11 justice of the supreme court or judge of the court of appeals.

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

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

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

25 (h) "State judicial official" means the holder of an office
26 described in subdivision (d) whose current term began after the
27 effective date of this act.

28 Sec. 3. (1) If an individual is a state judicial official at
29 any time during a calendar year, that individual shall

1 electronically file with the secretary of state by May 15 of the
2 following year a report that meets the requirements of section 4.
3 This subsection does not apply to an individual who was a state
4 judicial official only on the first day of the calendar year.

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

15 (a) State senator financial disclosure act.

16 (b) University board member financial disclosure act.

17 (c) State board of education financial disclosure act.

18 (d) State representative financial disclosure act.

19 (e) Executive branch financial disclosure act.

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

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

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

1 (b) The name of each member of the immediate family of the
2 individual filing the report who is not a dependent child and the
3 number of members of the immediate family of the individual filing
4 the report who are dependent children.

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

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

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

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

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

24 (f) Excluding a primary residence, the address of each parcel
25 of real property held during the preceding calendar year by the
26 individual filing the report or a member of the immediate family of
27 that individual if the real property had a fair market value of
28 \$50,000.00 or more at any time the real property was held during
29 the preceding calendar year. An individual filing a report may

1 exclude the street number of a parcel of real property listed under
2 this subdivision.

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

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

14 (i) A qualified or nonqualified annuity.

15 (ii) A benefit under a qualified or nonqualified plan of
16 deferred compensation.

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

19 (iv) An individual retirement account or trust.

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

24 (i) The identity of all compensated positions held by the
25 individual filing the report or a member of the immediate family of
26 that individual during the preceding calendar year as an officer,
27 director, member, trustee, partner, proprietor, representative,
28 employee, or consultant of a corporation, limited liability
29 company, limited partnership, partnership, or other business

1 enterprise; of a nonprofit organization; of a labor organization;
2 or of an educational or other institution other than this state, if
3 the total compensation received from a position equals \$1,000.00 or
4 more during that calendar year. A position reported under this
5 subdivision must include the title of the position, the name of the
6 entity within which the position exists, and the principal activity
7 of the entity.

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

17 (k) A description of any interest the individual filing the
18 report or a member of the immediate family of that individual had
19 during the preceding calendar year in a legal entity that conducts
20 business in this state, if the interest has a book value of
21 \$10,000.00 or more, unless the entity has shares that are listed or
22 traded over the counter or on an organized exchange.

23 (2) Subject to subsection (4), information an individual is
24 required to report under this section includes information with
25 respect to the income from a trust or other financial arrangement
26 from which income is received by, or with respect to which a
27 beneficial interest in principal or income is held by, an
28 individual required to file a report under this section or a member
29 of the immediate family of that individual.

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

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

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

13 (a) Information an individual is required to report under the
14 Michigan 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)(f) or (g) if all of the following apply:

17 (i) The item represents the exclusive 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
28 terminating the marriage or maintaining a legal separation.

29 (d) An item that concerns income of the individual filing the

1 report or a member of the immediate family of that individual
2 arising from dissolution of the individual's or member's marriage
3 or a permanent legal separation from the individual's or member's
4 spouse.

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

11 (f) Benefits received under the social security act, chapter
12 531, 49 Stat 620.

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

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

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

20 (c) Prepare forms, instructions, and manuals required under
21 this act.

22 (d) Promulgate rules and issue declaratory rulings to
23 implement this act pursuant to the administrative procedures act of
24 1969, 1969 PA 306, MCL 24.201 to 24.328.

25 (e) Upon receiving a written request and the required filing,
26 waive payment of a late filing fee if the request for the waiver is
27 based on good cause and accompanied by adequate documentation. One
28 or more of the following reasons constitute good cause for a late
29 filing fee waiver:

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

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

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

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

22 (2) The secretary of state shall issue a declaratory ruling
23 under this section only if the person requesting the ruling has
24 provided a reasonably complete statement of facts necessary for the
25 ruling or if the person requesting the ruling has, with the
26 permission of the secretary of state, supplied supplemental facts
27 necessary for the ruling. Within 2 days after receiving a request
28 for a declaratory ruling, the secretary of state shall make the
29 request available in the manner provided for under subsection

(1)(f). An interested person may submit written comments regarding the request to the secretary of state within 10 business days after the date the request is made available to the public. Within 45 business days after receiving a declaratory ruling request, the secretary of state shall make a proposed response available in the manner provided for under subsection (1)(f). An interested person may submit written comments regarding the proposed response to the secretary of state within 5 business days after the date the proposal is made available to the public. Except as otherwise provided in this section, the secretary of state shall issue a declaratory ruling within 60 business days after receiving a request for a declaratory ruling. If the secretary of state refuses to issue a declaratory ruling, the secretary of state shall notify the person making the request of the reasons for the refusal and issue an interpretative statement providing an informational response to the question presented within the 60-day period. A declaratory ruling or interpretative statement issued under this section must not state a general rule of law, other than that which is stated in this act, until the general rule of law is promulgated by the secretary of state as a rule pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, or under judicial order.

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

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

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

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

23 (a) Be signed by the complainant.

24 (b) State the name, address, and telephone number of the
25 complainant.

26 (c) Include the complainant's certification that, to the best
27 of the complainant's knowledge, information, and belief, formed
28 after a reasonable inquiry under the circumstances, each factual
29 contention of the complaint is supported by evidence. However, if,

1 after a reasonable inquiry under the circumstances, the complainant
2 is unable to certify that certain factual contentions are supported
3 by evidence, the complainant may certify that, to the best of his
4 or her knowledge, information, or belief, there are grounds to
5 conclude that those specifically identified factual contentions are
6 likely to be supported by evidence after a reasonable opportunity
7 for further inquiry.

8 (7) A person shall not file a complaint with a false
9 certificate under subsection (6)(c). A person may file a complaint
10 under subsection (5) alleging that another person has filed a
11 complaint with a false certificate under subsection (6)(c).

12 (8) The secretary of state shall investigate allegations
13 brought under this act pursuant to the rules promulgated under this
14 act. If an allegation involves the secretary of state, or a member
15 of the immediate family of the secretary of state, the secretary of
16 state shall refer the matter to the attorney general to determine
17 whether a violation of this act occurred.

18 (9) No later than 45 business days after receiving a rebuttal
19 statement submitted under subsection (5) or, if no response or
20 rebuttal is received under subsection (5), 45 business days after
21 receiving a complaint under subsection (5), the secretary of state
22 shall post on the secretary of state's website whether there may be
23 reason to believe that a violation of this act occurred. If the
24 secretary of state determines whether there may be reason to
25 believe that a violation of this act occurred or determines to
26 terminate its proceedings, the secretary of state shall, within 30
27 days after that determination, post on the secretary of state's
28 website any complaint, response, or rebuttal statement received
29 under subsection (5) regarding that violation or alleged violation

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

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

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

29 (12) The secretary of state shall review a report or statement

1 filed under this act and may investigate an apparent violation of
2 this act pursuant to the rules promulgated under this act. If the
3 secretary of state determines that there may be reason to believe a
4 violation of this act occurred and the procedures prescribed in
5 subsection (9) have been complied with, the secretary of state may
6 commence a hearing under subsection (10) to determine whether a
7 violation of this act occurred.

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

11 (a) Pay to the secretary of state some or all of the expenses
12 incurred by the secretary of state as a direct result of the
13 violation.

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

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

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

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

27 (3) The secretary of state shall preserve a report filed under
28 this act for 15 years after the date the report is filed. If the
29 secretary of state or attorney general determines under section 6

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

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

15 (5) The secretary of state shall determine whether a statement
16 or report filed under this act complies, on its face, with the
17 requirements of this act and the rules promulgated under this act.
18 The secretary of state shall determine whether a statement or
19 report that is required to be filed under this act is in fact
20 filed.

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

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

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

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

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

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

7 (3) A late filing fee collected under this act must be
8 deposited into the state official financial disclosure fund created
9 in section 9 of the state representative financial disclosure act.

10 A late filing fee assessed under this act that remains unpaid for
11 more than 180 days must be referred to the department of treasury
12 for collection.

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