

HOUSE BILL NO. 4344

February 24, 2021, Introduced by Reps. Rabhi, LaGrand, Rogers, Stone, Manoogian, Young, Brabec, O'Neal, Koleszar, Bellino, Cavanagh, Filler, Aiyash, Scott, Brenda Carter, Tate, Brixie, Kuppa, Coleman, Pohutsky, Thanedar, Sabo, Hertel, Camilleri, Hammoud, Hood, Bolden, Haadsma, Weiss, Steckloff, Tyrone Carter, Sowerby, Marino, Huizenga, Brann and Jones and referred to the Committee on Elections and Ethics.

A bill to regulate political activity; to require members of and candidates for the state board of education 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 "state

1 board of education financial disclosure act".

2 Sec. 2. As used in this act:

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

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

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

11 (d) "Candidate for office" means a candidate for the office of
12 member of the state board of education.

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

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

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

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

29 Sec. 3. (1) If an individual is a state official at any time

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

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

16 (a) State senator financial disclosure act.

17 (b) University board member financial disclosure act.

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

19 (d) State representative financial disclosure act.

20 (e) Executive branch financial disclosure act.

21 (f) Judicial branch financial disclosure act.

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

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

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

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

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

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

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

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

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

26 (f) Excluding a primary residence, the address of each parcel
27 of real property held during the preceding calendar year by the
28 individual filing the report or a member of the immediate family of
29 that individual if the real property had a fair market value of

1 \$50,000.00 or more at any time the real property was held during
2 the preceding calendar year. An individual filing a report may
3 exclude the street number of a parcel of real property listed under
4 this subdivision.

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

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

16 (i) A qualified or nonqualified annuity.

17 (ii) A benefit under a qualified or nonqualified plan of
18 deferred compensation.

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

21 (iv) An individual retirement account or trust.

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

26 (i) The identity of all compensated positions held by the
27 individual filing the report or a member of the immediate family of
28 that individual during the preceding calendar year as an officer,
29 director, member, trustee, partner, proprietor, representative,

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

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

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

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

1 individual required to file a report under this section or a member
2 of the immediate family of that individual.

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

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

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

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

17 (b) An item otherwise required to be reported under section
18 4(1)(f) or (g) if all of the following apply:

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

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

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

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

1 terminating the marriage or maintaining a legal separation.

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

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

13 (f) Benefits received under the social security act, chapter
14 531, 49 Stat 620.

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

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

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

22 (c) Prepare forms, instructions, and manuals required under
23 this act.

24 (d) Promulgate rules and issue declaratory rulings to
25 implement this act pursuant to the administrative procedures act of
26 1969, 1969 PA 306, MCL 24.201 to 24.328.

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

1 or more of the following reasons constitute good cause for a late
2 filing fee waiver:

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

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

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

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

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

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

25 (3) Under extenuating circumstances, the secretary of state
26 may issue a notice extending, for not more than 30 business days,
27 the period during which the secretary of state shall respond to a
28 request for a declaratory ruling. The secretary of state shall not
29 issue more than 1 notice of extension for a particular request. A

1 person requesting a declaratory ruling may waive, in writing, the
2 time limitations provided by this section.

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

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

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

25 (a) Be signed by the complainant.

26 (b) State the name, address, and telephone number of the
27 complainant.

28 (c) Include the complainant's certification that, to the best
29 of the complainant's knowledge, information, and belief, formed

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

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

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

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

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

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

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

1 the amount of a civil fine.

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

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

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

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

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

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

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

29 (3) The secretary of state shall preserve a report filed under

1 this act for 15 years after the date the report is filed. If the
2 secretary of state or attorney general determines under section 6
3 that a violation of this act occurred, the secretary of state shall
4 preserve all complaints, orders, decisions, or other documents
5 related to that violation for 15 years after the date of the
6 determination or the date the violation is corrected, whichever is
7 later. Reports filed under this act may be reproduced pursuant to
8 the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406.

9 After the required preservation period, the reports, or the
10 reproductions of the reports, may be disposed of in the manner
11 prescribed in the management and budget act, 1984 PA 431, MCL
12 18.1101 to 18.1594, and section 11 of the Michigan history center
13 act, 2016 PA 470, MCL 399.811.

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

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

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

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

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

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

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

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

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

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