

***** Act 281 of 2023 THIS NEW ACT IS EFFECTIVE FEBRUARY 13, 2024 *****

PUBLIC OFFICERS FINANCIAL DISCLOSURE ACT
Act 281 of 2023

AN ACT to require certain public officers to file annual financial disclosure reports; to create a financial disclosure form; to prescribe penalties and civil sanctions; and to provide for the powers and duties of certain state and local governmental officers and entities.

History: 2023, Act 281, Eff. Feb. 13, 2024.

The People of the State of Michigan enact:

***** 15.701.new THIS NEW SECTION IS EFFECTIVE FEBRUARY 13, 2024 *****

15.701.new Short title; expectation of transparency.

Sec. 1. (1) This act may be cited as the "public officers financial disclosure act".

(2) The financial disclosures required by this act represent a minimum expectation of transparency, and individuals subject to this act are encouraged to make financial disclosures in addition to those required by this act.

History: 2023, Act 281, Eff. Feb. 13, 2024.

***** 15.703.new THIS NEW SECTION IS EFFECTIVE FEBRUARY 13, 2024 *****

15.703.new Definitions.

Sec. 3. As used in this act:

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

(b) "Department" means the department of state.

(c) "Earned income" means salaries, wages, tips, bonuses, commissions, or other compensation or earnings from employment earned during the reporting period.

(d) "Form" means the financial disclosure form created by the department in accordance with section 11.

(e) "Gift" means that term as defined in section 7 of the Michigan campaign finance act, 1976 PA 388, MCL 169.207.

(f) "Honorarium" means that term as defined in section 7 of the Michigan campaign finance act, 1976 PA 388, MCL 169.207.

(g) "Liabilities" means what a person owes to another person, including, but not limited to, mortgages or other debts. For purposes of this act, a debt does not include a revolving debt, an unsecured debt that is from a financial institution or the federal government, or a debt owed by a business entity.

(h) "Lobbyist" means that term as defined in section 5 of 1978 PA 472, MCL 4.415.

(i) "Lobbyist agent" means that term as defined in section 5 of 1978 PA 472, MCL 4.415.

(j) "Spouse" means an individual who is lawfully married to a public officer as described under 26 CFR 30.7701-18.

(k) "Public officer" means all of the following:

(i) A state representative.

(ii) A state senator.

(iii) The attorney general.

(iv) The governor.

(v) The lieutenant governor.

(vi) The secretary of state.

(l) "Report" means the financial disclosure report required under section 10 of article IV of the state constitution of 1963.

(m) "Reporting period" means the preceding calendar year.

(n) "Unearned income" means income that is not earned from employment, including, but not limited to, financial prize, unemployment benefits, annuities, stock dividends, deferred compensation, pension, profit sharing, or retirement income. Unearned income does not include inheritance money or a familial gift.

History: 2023, Act 281, Eff. Feb. 13, 2024.

***** 15.705.new THIS NEW SECTION IS EFFECTIVE FEBRUARY 13, 2024 *****

15.705.new Annual financial disclosure report; filing requirement; timing; notice; corrections.

Sec. 5. (1) A public officer shall file an annual financial disclosure report with the department.

(2) The report required under this section must first be filed by April 15, 2024, and by May 15 of each year thereafter. This subsection does not apply to an individual who was a public officer only on the first day of the calendar year.

(3) If a public officer who is required to file a report under this act receives notice from the secretary of state under section 13(1)(g), the public officer shall, within 9 business days after receiving the notice, file corrections to the errors or omissions or file the report, as applicable.

History: 2023, Act 281, Eff. Feb. 13, 2024.

***** 15.707.new THIS NEW SECTION IS EFFECTIVE FEBRUARY 13, 2024 *****

15.707.new Financial disclosure report; required contents; blind trust exception; certification.

Sec. 7. (1) A report required under section 5 must include a complete statement of all of the following:

(a) The full name, mailing address, telephone number, and email address of the public officer.

(b) The name and address of the public officer's employer and the positions held during the reporting period, if the public officer receives \$1,000.00 or more in annual income from each position.

(c) The name of the spouse of the public officer, the occupation of the public officer's spouse, and the name of the employer or employers of the public officer's spouse.

(d) Whether the public officer's spouse was registered as a lobbyist or lobbyist agent under 1978 PA 472, MCL 4.411 to 4.431, during the reporting period.

(e) A list of all positions currently held as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any organization, corporation, firm, partnership, or other business enterprise, nonprofit organization, labor organization, or educational or other institution other than this state. If this subdivision applies, the public officer shall include the name of the organization. For purposes of this subdivision, positions held in any religious, social, fraternal, or political entity, or positions that are solely of an honorary nature, are excluded.

(f) The source of earned income received during the reporting period by the public officer. For purposes of this subdivision, the public officer must report each source of income received during the reporting period that is \$1,000.00 or more.

(g) Except as otherwise provided in this subdivision, a list of each asset, excluding a business asset, held for investment or production of income with a fair market value of \$1,000.00 or more during the reporting period and any sources of unearned income that exceed \$200.00 during the reporting period. The fair market value for the purpose of listing each asset, excluding a business asset, held for investment or production of income under this subdivision must be adjusted for inflation every 4 years using the Detroit Consumer Price Index, and rounded up to the nearest \$1,000.00.

(h) A list of all liabilities that exceed \$10,000.00 owed by the public officer to a creditor at any time during the reporting period.

(i) Except as otherwise provided in this subdivision, a list of any stocks, bonds, or other forms of securities held by the public officer or held jointly with the public officer's spouse during the reporting period, if the security has a total aggregate fair market value of \$1,000.00 or more. The fair market value for the purpose of listing stocks, bonds, or other forms of securities under this subdivision must be adjusted for inflation every 4 years using the Detroit Consumer Price Index, and rounded up to the nearest \$1,000.00. For purposes of this act, a public officer is not required to disclose a stock in a widely held investment fund, including, but not limited to, a mutual fund, regulated investment company, pension or deferred compensation plan, or other investment fund, if both of the following apply:

(i) Either the fund is publicly traded or the assets of the fund are widely diversified.

(ii) The public officer or the public officer's spouse does not exercise control over or have the ability to exercise control over the financial interests held by the fund.

(j) A list of any real property in which the public officer holds an ownership or other financial interest. For purposes of this subdivision, the public officer is required to include a real property in the report only if that real property has a fair market value of \$1,000.00 or more during the reporting period. A public officer filing a report may exclude the street number of a parcel of real property under this subdivision.

(k) The date, identity of parties to, and general terms of any agreements or arrangements with respect to future employment, a leave of absence while serving as a public officer, continuation or deferral of payments

by a former or current employer other than this state, or continuing participation in an employee welfare or benefit plan maintained by a former employer. As provided in section 8, there is an ongoing duty to report any agreement or arrangement entered into by a public officer after the filing deadline described in section 5(2).

(l) A list of all gifts received and reported by a lobbyist or lobbyist agent under state law.

(m) A list of all travel payments received and reported by a lobbyist or lobbyist agent under state law.

(n) A list of each payment made by a lobbyist or lobbyist agent to a charity in lieu of honoraria.

(o) If applicable, a statement indicating that the public officer or the public officer's spouse is a registered vendor with this state, has a majority interest in a company that is a registered vendor with this state, or is employed by a company that is a registered vendor with this state. If the public officer or the public officer's spouse is a registered vendor with this state or has a majority interest in a company that is a registered vendor with this state, the public officer shall include the name of the company and a description of all contracts entered into with this state by the public officer, public officer's spouse, or company in which the public officer or public officer's spouse has a majority interest during the reporting period. If the public officer or public officer's spouse is employed by a company that is a registered vendor with this state, the public officer shall include the name of the company and a description of all contracts entered into with this state that the public officer or the public officer's spouse worked on directly during the reporting period.

(2) A public officer is not required to disclose the value of any real property or property disclosed under subsection (1).

(3) If a public officer required to file a report under this section holds a beneficial interest in a blind trust, the public officer is not required to include the interests or assets of the blind trust in the report. However, the public officer must indicate in the public officer's report that the public officer holds a beneficial interest in a blind trust. For purposes of this subsection, beneficial includes, but is not limited to, the interest in a trust of a qualified trust beneficiary or trust beneficiary as those terms are defined under section 7103 of the estates and protected individuals code, 1998 PA 386, MCL 700.7103.

(4) A report required under section 5 must include the following certification: "I certify that the statements I have made on this financial disclosure form are true, complete, and correct to the best of my knowledge and belief, and that I have not moved assets during the reporting period for the purpose of avoiding disclosure under the public officers financial disclosure act".

History: 2023, Act 281, Eff. Feb. 13, 2024.

***** 15.708.new THIS NEW SECTION IS EFFECTIVE FEBRUARY 13, 2024 *****

15.708.new Future employment agreement or arrangement; report to department.

Sec. 8. A public officer who is not reelected or seeking reelection to public office must report to the department within 10 days after entering into any agreement or arrangement described in section 7(1)(k) the date, identity of the parties to, and the general terms of any agreement or arrangement with respect to future employment that the public officer is to begin within 1 year after the end of the public officer's term of office.

History: 2023, Act 281, Eff. Feb. 13, 2024.

***** 15.709.new THIS NEW SECTION IS EFFECTIVE FEBRUARY 13, 2024 *****

15.709.new Permissible omissions from report.

Sec. 9. A public officer filing a report under section 5 may omit any of the following:

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

(b) An item otherwise required to be reported under section 7(1)(i) or (j) if all of the following apply:

(i) The item represents the exclusive financial interest and responsibility of the public officer's spouse about which the public officer does not have control.

(ii) The item is not in any way derived from the income, assets, or activities of the public officer.

(iii) The public officer does not derive, or expect to derive, financial benefit from the item.

(c) An item that concerns a spouse who is living separate and apart from the public officer with the intention of terminating the marriage or maintaining a legal separation.

(d) An item that concerns income of the public officer arising from dissolution of the public officer's marriage or a permanent legal separation from the public officer's spouse.

History: 2023, Act 281, Eff. Feb. 13, 2024.

***** 15.711.new THIS NEW SECTION IS EFFECTIVE FEBRUARY 13, 2024 *****

15.711.new Standard financial disclosure form; accessibility.

Sec. 11. (1) Within 30 days after the effective date of this act, the department shall create a standard financial disclosure form that incorporates the requirements of section 7 for use by a public officer to file the financial disclosure report required under this act.

(2) The department shall, no later than March 15, 2024, make the form created under this section easily accessible on its website.

History: 2023, Act 281, Eff. Feb. 13, 2024..

***** 15.713.new THIS NEW SECTION IS EFFECTIVE FEBRUARY 13, 2024 *****

15.713.new Secretary of state; duties and responsibilities; declaratory ruling; filing of violations complaint; investigation; rebuttal statement; determination; hearing; final decision or order; report preservation.

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

(a) Make available through the secretary of state's offices appropriate forms, instructions, and manuals required by this act.

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

(c) Create all forms, instructions, and manuals required under this act.

(d) Issue declaratory rulings to implement this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

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

(i) The incapacitating physical illness, hospitalization, accident involvement, death, or incapacitation for medical reasons of a public officer or an individual whose participation is essential to the preparation of the report.

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

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

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

(2) The secretary of state shall issue a declaratory ruling under this section only if the person requesting the ruling has provided a reasonably complete statement of facts necessary for the ruling or if the person requesting the ruling has, with the permission of the secretary of state, supplied supplemental facts necessary for the ruling. Within 2 business days after receiving a request for a declaratory ruling, the secretary of state shall make the 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. The secretary of state may refuse to issue a declaratory ruling or an interpretive statement under this act if the request is anonymous, the secretary of state determines that the subject matter of the request is frivolous on its face, or the request is indefinite or lacks specificity. 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 interpretive statement providing an informational response to the question presented within the 60-day period. A declaratory ruling or interpretive statement issued under this section must not state a general rule of law, other than that which is stated in this act, 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.

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

(5) A person may file with the secretary of state a complaint that alleges a violation of this act. Within 5 business days after a complaint that meets the requirements of subsection (6) is filed, the secretary of state shall mail notice to the person against whom the complaint is filed. The notice must include a copy of the complaint. Within 15 business days after the notice is mailed, the person against whom the complaint was filed may submit a response to the secretary of state. The secretary of state may extend the period for submitting a response an additional 15 business days for good cause. The secretary of state shall mail a copy of a response received to the complainant. Within 10 business days after the response is mailed, the complainant may submit a rebuttal statement to the secretary of state. The secretary of state may extend the period for submitting a rebuttal statement an additional 10 business days for good cause. The secretary of state shall provide a copy of the rebuttal statement to the person against whom the complaint was filed. If, on review of the complaint, the secretary of state determines that the complaint is frivolous, illegible, indefinite, or unsigned, or does not identify an alleged violator, allege a violation of the act, or contain a verification statement, the secretary of state may summarily dismiss the complaint without prejudice. If a complaint is summarily dismissed, the complainant must be notified in writing as to the reason the complaint was dismissed. The secretary of state may consolidate similar complaints.

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

(a) Be signed by the complainant.

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

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

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

(8) The secretary of state shall investigate allegations brought under this act. If an allegation involves the secretary of state, or the secretary of state's spouse, the secretary of state shall refer the matter to the attorney general to determine whether a violation of this act occurred.

(9) No later than 45 business days after receiving a rebuttal statement submitted under subsection (5) or, if no response or rebuttal is received under subsection (5), 45 business days after receiving a complaint under subsection (5), the secretary of state shall post on the secretary of state's website whether there may be reason to believe that a violation of this act occurred. If the secretary of state determines there may be reason to believe that a violation of this act occurred or determines to terminate its proceedings, the secretary of state shall, within 30 days after that determination, post on the secretary of state's website any complaint, response, or rebuttal statement received under subsection (5) regarding that violation or alleged violation and any correspondence that is dispositive of that violation or alleged violation between the secretary of state and the complainant or the person against whom the complaint was filed. If the secretary of state determines that there may be reason to believe that a violation of this act occurred, the secretary of state shall endeavor to correct the violation or prevent a further violation by using informal methods such as a conference, conciliation, or persuasion, and may enter into a conciliation agreement with the person involved. Unless violated, a conciliation agreement is a complete bar to any further civil action with respect to matters covered in the conciliation agreement. The secretary of state shall, within 30 days after a conciliation agreement is signed, post that agreement on the department's website. If, after 90 business days, the secretary of state is unable to correct or prevent further violation by these informal methods, the secretary of state may commence a hearing as provided in subsection (10) for enforcement of this act.

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

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

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

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

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

History: 2023, Act 281, Eff. Feb. 13, 2024.

***** 15.715.new THIS NEW SECTION IS EFFECTIVE FEBRUARY 13, 2024 *****

15.715.new Failure to file report; penalties.

Sec. 15. (1) An individual who fails to file a report as required under this act shall pay a late filing fee of \$25.00 for each business day after the first 10 business days that the report remains unfiled. The fee imposed under this subsection must not exceed \$1,000.00.

(2) A late filing fee collected under this act must be deposited into the general fund.

(3) An individual who knowingly files an incomplete or inaccurate report in violation of this act may be ordered to pay a civil fine of not more than \$2,000.00.

(4) A late filing fee assessed or civil fine imposed under this act that remains unpaid for more than 180 days must be referred to the department of treasury for collection.

(5) The amount of a late filing fee assessed or civil fine imposed under this act must be adjusted for inflation every 4 years using the Detroit Consumer Price Index.

History: 2023, Act 281, Eff. Feb. 13, 2024.